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Supreme Court of the United States

OCTOBER TERM, 1962

No. 419

LOCAL LODGE NO. 1836 OF DISTRICT 38 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, ET AL., PETITIONERS,

vs.

LOCAL NO. 1505 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 6, 1962
CERTIORARI GRANTED NOVEMBER 19, 1962

SUPREME COURT OF THE UNITED STATES

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[fol. A]

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 5975

LOCAL NO. 1505 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, Intervenor, Appellant;

v.

LOCAL LODGE NO. 1836 OF DISTRICT 38 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, ET AL., Appellees.

No. 5976

RAYTHEON COMPANY, Defendant, Appellant,

v.

LOCAL LODGE NO. 1836 OF DISTRICT 38 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, ET AL., Appellees.

Joint Appendix

[fol. 1]

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

Civil Action No. 61-97-C

LOCAL LODGE No. 1836 OF DISTRICT 38 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO,

v.

RAYTHEON MANUFACTURING COMPANY.

RELEVANT DOCKET ENTRIES

1961		
Feb.	3	Complaint filed. Summons issued.
Apr.	25	Defendant's answer filed.
May	10	Petition for leave to intervene brought by and in behalf of Local #1505 International Brotherhood of Electrical Workers AFL-CIO, filed.
Jun	19	CAFFREY, D.J. After pre-trial hearing, Petition for leave to intervene taken under advisement.
	22	Answer of Intervenor, Local #1505 International Brotherhood of Electrical Workers, AFL-CIO, filed.
Jul	11	Motion for summary judgment filed by the attorney for the pltff.
Sep	29	CAFFREY, D.J. ORDER entered. . . . motion for leave to intervene allowed.
Nov.	3	Defendant's motion for summary judgment and motion to dismiss for lack of jurisdiction of the subject matter, filed.

[fol. 2]

	6	CAFFREY, D.J. Hearing on Dft's Motion for S/J and Motion to dismiss for lack of jurisdiction, after argument by dft. and counsel appearing for plf. to oppose. Motion taken under advisement.

1962

Jan 24 CAFFREY, D.J. OPINION entered . . . Union's motion for summary judgment is *allowed*. Raytheon and Intervenor's motions for summary judgment and to dismiss are *denied*.

24 CAFFREY, D.J. JUDGMENT entered. After argument of counsel and in accordance with Opinion handed down this date, it is ORDERED:

1. That the respondent Raytheon Manufacturing Co. submit to arbitration the grievance described in the complaint filed herein, in accordance with Article XVIII of the agreement between petitioner and respondent.

2. Application of Local Lodge 1505 for leave to participate is denied.

3. Petitioner Local Lodge No. 1836 may recover its costs herein.

Feb 8 Notice of Appeal frm jdgmt entered Jan 24, 1962 filed by Local #1505 IBEW, proposed intervenor.

8 Motion for stay, filed. Now comes Local #1505 International Brotherhood of Electrical Workers and moves that further proceedings be stayed pending appeal to the US Court of Appeals for the First Circuit.

21 Notice of Appeal frm jdgmt and order entered on Jan 24, 1962 filed by deft,

21 Motion for Stay of Judgment pending appeal, filed. Now comes the Raytheon Co., deft, in

[fol. 3]

the above named action hereby moves the court to suspend execution of judgment and order entered in this action on January 24, 1962 pending deft's appeal to the US Court of Appeals for the First Circuit, filed.

Mar. 9 CAFFREY, D.J. ORDER entered . . . Intervenor appellant's motion for stay pending appeal is allowed (See papers for conditions)

9 CAFFREY, D.J. ORDER entered . . . Respondent appellant's motion for stay pending appeal is allowed (See papers for conditions).

12 Original pleadings delivered to Court of Appeals.

IN UNITED STATES DISTRICT COURT

COMPLAINT—Filed February 3, 1961

1. The plaintiff brings this action under the Labor-Management Relations Act of 1947, Title III, Section 301; Public Law 101, 80th Congress; 29 U.S.C.A., Section 185 et seq., under which this Court has jurisdiction without respect to the amount in controversy or diversity of citizenship.

2. The plaintiff, Local Lodge No. 1836 of District 38 of the International Association of Machinists, AFL-CIO (hereinafter referred to as the "Union") is an unincorporated association having its principal office in the City of Waltham, Commonwealth of Massachusetts and is a labor organization within the meaning of the Act.

3. The defendant, Raytheon Manufacturing Company, (hereinafter referred to as the "Company") is a corporation organized and existing under the laws of the State of Delaware, and having a principal place of business in the City of Waltham, Commonwealth of Massachusetts.

[fol. 4] 4. The Company is an industry affecting commerce as defined in the Act.

5. The plaintiff is now engaged in and for many years has been engaged in representing employees of the Company with respect to wages, hours and other conditions of employment within the meaning of the Act.

6. On August 8, 1956 the Company and the Union entered into a collective bargaining agreement which was to be effective from August 8, 1956 to May 31, 1959. A copy

of said agreement is annexed hereto and marked "Exhibit A". Article I of said agreement provided:

> "The Company recognizes the Union as the sole and exclusive collective bargaining agent with respect to wages, hours and conditions of employment for all of the Company's employees in the Company's presently existing Massachusetts plants while, during the life of this Agreement, they are classified as Experimental and Development Machinists A, B and C; Machinists A, B and C; Maintenance Machinists A and B; Die Makers A, B and C; Tool Makers A, B and C; and Tool Grinders A, B and C, in accordance with the job classification descriptions in effect on June 1, 1953, incorporated herein by reference, or as apprentices to such job classifications. The labor grades of such occupational titles are shown in Appendix 'A.' Such persons are hereinafter referred to as 'the employees', and such employees together are referred to as 'the unit'. All other employees and supervisors as defined in the Act are excluded from this Agreement."

7. On November 7, 1958, the Union filed a grievance alleging that the Company violated Article I of the agreement by assigning work embodied within the classifications and job descriptions incorporated by reference in the agreement to employees outside the bargaining unit at times [fol. 5] when the employees in the bargaining unit were ready, willing and able to perform such work. A copy of said grievance and job descriptions are annexed hereto and marked "Exhibits B" and "C" respectively. On November 10, 1958, the Union filed an amendment to said grievance, a copy of which is annexed hereto and marked "Exhibit D."

8. Thereafter, the Union filed additional grievances alleging that the Company had violated the agreement by assigning the work described below to employees outside the bargaining unit when the employees in the bargaining unit were ready, willing and able to perform such work. The work referred to was:

(a) Spencer Laboratory (Burlington)—The making of tools, jigs, and fixtures from raw stock.

(b) Quincy—The maintenance, set-up and servicing of stem bending machines.

(c) Wayland Laboratories—The repair, replacement of parts and maintenance of blue print machines.

(d) Industrial Components Division (Newton)—The grinding of grid chopper blades on surface grinding machines.

The Company and Union agreed to incorporate the latter grievance into the original grievance filed November 7, 1958, as amended.

9. The aforesaid grievance was processed in accordance with the grievance procedure set forth in the collective bargaining agreement. When no agreement was reached, the Union by letter to the Company dated February 4, 1959 stated its desire to submit the dispute to arbitration. Thereafter, the parties agreed that negotiations concerning such grievance would continue and the Union's request for arbitration would not become applicable unless either party notify the other in writing of that fact.

[fol. 6] 10. On September 8, 1959, the parties entered into a collective bargaining agreement to be effective from September 8, 1959 to May 31, 1961. A copy of said agreement is annexed hereto and marked "Exhibit E".

11. The parties were unsuccessful in their attempts to settle said grievance and on May 11, 1960, the Union notified the Company of its desire to proceed to arbitration. A copy of said letter is annexed hereto and marked "Exhibit F".

12. On May 26, 1960, the Company notified the Union that it would not submit said grievance to arbitration.

13. The Company's refusal to submit said grievance to arbitration was and is a violation and breach of the collective bargaining agreement between the parties.

Wherefore the Union prays that the Company be ordered to submit the aforesaid grievance to arbitration in accordance with Article XVIII of the agreement and that the

Union have such other and further relief as to the Court seems just and proper.

By Its Attorneys, Segal & Flamm, Arthur J. Flamm.

EXHIBIT A TO COMPLAINT

AGREEMENT

THIS AGREEMENT, entered into this *8th* day of *August, 1956*, by and between RAYTHEON MANUFACTURING COMPANY, Waltham, Massachusetts, hereinafter referred to as the "Company", and LOCAL LODGE, No. 1836 of DISTRICT 38 of the INTERNATIONAL ASSOCIATION OF MACHINISTS, *AFL-CIO*, hereinafter referred to as the "Union",

[fol. 7] WITNESSETH that:

WHEREAS, the National Labor Relations Board, by its Regional Director for the First Region, certified the Union as the representative of the Company's employees classified as Experimental and Development Machinists A, B and C; Machinists A, B and C; Maintenance Machinists; Die Makers A, B and C; Tool Makers A, B and C; Tool Grinders A, B and C, who were employed during the payroll period ending March 16, 1952, excluding all other employees and supervisors as defined in the National Labor Relations Act; and

WHEREAS, pursuant to said Act the parties hereto have engaged in collective bargaining and reached the agreement herein set forth,

NOW THEREFORE, it is hereby agreed by and between the parties as follows:

ARTICLE I

Recognition

1.0 The Company recognizes the Union as the sole and exclusive collective bargaining agent with respect to wages, hours and conditions of employment for all of the Company's employees in the Company's presently existing Massachusetts plants while, during the life of this Agree-

ment, they are classified as Experimental and Development Machinists A, B and C; Machinists A, B and C; Maintenance Machinists A and B; Die Makers A, B and C; Tool Makers A, B and C; and Tool Grinders A, B and C, in accordance with the job classification descriptions in effect on June 1, 1953, incorporated herein by reference, *or as apprentices to such job classifications.* The labor grades of such occupational titles are shown in Schedule A. Such persons are hereinafter referred to as "the employees", and such employees together are referred to as "the unit". [fol. 8] All other employees and supervisors as defined in the Act are excluded from this Agreement.

. . . . . .

Article III

Management's Rights

3.0 It is expressly understood and agreed that the rights, powers, functions and authority of management enjoyed at common law shall continue to be vested exclusively in the management of the Company except to the extent limited by statute or by the express and specific provisions hereof.

3.1 It is recognized that from time to time in an effort to define more accurately the work to be performed by employees classified in accordance with the job classification descriptions incorporated herein by reference and to clarify distinctions between jobs within the unit, the Company may make such changes in the language of the descriptions as are deemed necessary and advisable, subject to the protest of the Union. Changes shall become effective (30) days after notification of the Union, if no protest is filed by the Union within such period. Any such protest, limited as above stated, shall be settled in accordance with Section 18.2 hereof.

. . . . . .

Article XI

Wages

11.0 The wage rates which shall be effective under this Agreement are set forth in Appendix "A" annexed hereto

and made a part hereof. Automatic increases of five cents (5c) per hour shall become effective at ninety-day intervals on the nearest Monday, until the maximum of the rate range for the employee's classification has been reached.

11.1 Employees shall be paid the wage rates applicable to the job classification description incorporated herein by [fol. 9] reference most nearly corresponding to the work regularly performed by them. The Company may temporarily assign an employee the work of a higher classification for a period not to exceed two (2) consecutive calendar weeks without promoting him. The assignment of an employee to the performance of work requiring less than the complete range of skills of his classification shall not furnish a basis for a claim on the part of other employees performing the same work to his classification.

11.2 An employee *promoted* to an instructor position within the bargaining unit shall receive a premium of five per cent (5%) of his regular straight-time rate of pay, as long as he remains in such position. An employee *promoted* to a group leader position within the bargaining unit shall receive a premium of ten per cent (10%) of his regular straight-time rate of pay, as long as he remains in such position.

. . . . . .

Article XVIII

Adjustment of Grievances

18.0 For the purposes of this Agreement, the term "grievance" means any dispute between the Company and the Union, or between the Company and any employee, concerning the interpretation of this Agreement in its application to any particular situation or as to whether it has been observed or performed.

18.1 Any grievance as above defined between the Company and an employee shall be settled, subject to the rights of the individuals granted by law, in accordance with the following procedure:

(a) The grievance shall be promptly submitted by the employee (with or without his Steward) to the fore-

man of the department involved. If no satisfactory [fol. 10] settlement is reached within *two (2) workdays* after such submission, then:

(b) *The aggrieved and the Steward* shall with the next *two (2) workdays* reduce the grievance to writing and, after it has been signed by the aggrieved, shall *submit it to* and discuss it with *the general foreman or department head or Company official of the equivalent level and the appropriate Personnel representative. If no satisfactory settlement is reached within the next following two (2) workdays, then:*

(c) *The Chief Steward and the Steward shall within the next three (3) workdays meet and discuss the grievance with a member of line management of the level of Plant Manager, or his delegate, and a representative of the Operations' Personnel Office. If no satisfactory settlement is reached within the next two (2) workdays following such discussion, then:*

(d) At a mutually convenient time or times the Shop Committee and a representative of the Union shall meet and discuss the grievance with designated representatives of the Company, which meeting or meetings shall take place not later than ten (10) days from the date of completion of Step (*c*).

(e) In the event the grievance is not settled in a satisfactory manner at the last meeting mutually agreed upon under Step (*d*), then the aggrieved party may within ten (10) days thereafter submit such grievance to arbitration in the manner hereinafter provided.

(f) The times for taking action stated above may be extended by mutual consent.

(g) Notwithstanding the foregoing, any such grievance challenging an employee's discharge or suspension for cause shall be presented in writing directly to the Company's Director of Personnel and Industrial Relations *or his delegate*. No such grievance shall be [fol. 11] considered unless submitted as above within three (3) working days from the date of such dis-

charge or suspension. If both discharge and suspension are found to be improper and the employee is reinstated, he shall be paid retroactively to the date of *such disciplinary action*. The grievance of a discharged or suspended employee must be signed by the employee affected and unless such employee attends the meeting at which time the grievance is discussed, as a witness, or unless upon request he is excused by the Director of Personnel and Industrial Relations which request shall not be unreasonably denied, the discharge or suspension shall be absolute and final.

18.2 Any grievance between the Company and the Union which does not involve a grievance of an individual employee shall be settled in accordance with the following procedure:

(a) In the event the Union is the aggrieved party, it shall submit its grievance in writing to the Company's Director of Personnel and Industrial Relations, and in the event the Company is the aggrieved party, it shall submit its grievance in writing to the Chief Steward of the Union. Within five (5) days of receipt of such grievance, at such time as shall be mutually agreeable, the Chief Steward and the Director of Personnel and Industrial Relations, or their delegates, shall meet and discuss the grievance. If the same has not been satisfactorily settled within ten (10) days of its submission, then:

(b) A meeting or meetings shall be held between designated representatives of the Company and designated representatives of the Union for the purpose of discussing the grievance. If the same is not settled as a result of such meeting or meetings, then the aggrieved [fol. 12] party may, within ten (10) days of the last meeting mutually agreed upon, submit such grievance to arbitration in the manner hereinafter provided.

18.3 The party submitting the grievance to arbitration shall, within the period stated above for such submission,

notify the other party in writing of its intention to arbitrate.

18.4 The arbitration board shall be selected according to, and shall be governed by, the following procedure:

(a) The Union and the Company, within seven (7) days of the mailing of the above-described notice of intention, shall each designate one arbitrator, and the two so designated shall within ten (10) days after their designation select a third who shall act as chairman. If the two designated arbitrators shall, within the above-allotted time, fail to agree upon a third, they shall request a panel of names from the American Arbitration Association, and select an arbitrator from such panel. Should they fail to agree upon any name on the panel within ten (10) days after the panel is furnished to them, then the third arbitrator shall be named by the American Arbitration Association upon the request of either party.

(b) The arbitrators shall consider the matter submitted for arbitration upon the basis of the submission agreed to by the parties, give a hearing to the persons immediately concerned and to representatives of the parties, and decide the grievance by majority vote on the basis of the evidence presented. Their decision shall be final and binding upon both parties and any employees involved. In the event the parties are unable to agree upon a submission, the arbitrators shall hear evidence and arguments from both parties on the question of the submission, and shall decide upon the [fol. 13] appropriate submission before proceeding with the hearing on the merits of the matter.

(c) Each party shall bear the expenses of preparing and presenting its own case and the costs of its own arbitrator. The costs, if any, of the neutral arbitrator and incidental expenses mutually agreed to in advance shall be shared equally between the two parties.

(d) Such arbitrators shall have no authority to alter or modify this Agreement or any of its provisions or

to prevent the Company and the Union from settling by mutual agreement, prior to final decision, any grievance submitted to arbitration hereunder.

(e) Awards or settlements of grievances by arbitration may or may not be retroactive as the equities of each case shall demand, in the judgment of the majority of the arbitrators making the award, but in no event shall any award be retroactive to a date prior to the date on which the grievance was first presented in written form as provided in Section 18.1 or 18.2 of this Article, *except as provided in Section 18.1 (g).*

18.5 Either party may propose that a single arbitrator hear and decide a particular grievance submitted to arbitration hereunder. If such proposal is mutually acceptable, the Company's Director of Personnel and Industrial Relations and the Union's Business Representative shall agree upon an arbitrator, and failing agreement, shall proceed in his selection in the manner described for selection of a neutral arbitrator in Subsection 18.4 (a) hereof. Such arbitrator shall have the same authority as is conferred on an arbitration board in Section 18.4 hereof.

18.6 If a party presenting a grievance shall fail to proceed therewith within the time or times hereinabove set forth or within such time or times as extended by mutual consent, he shall be conclusively presumed to have aban- [fol. 14] doned such grievance. If a party fails to receive an answer to his grievance within the time specified, or as extended, he may consider the grievance as having been denied at that step and he may proceed with it to the next step of the grievance procedure.

Article XIX

Seniority

19.0 The principles of seniority as hereinafter set forth shall be observed within the unit.

19.1 Seniority for present employees shall be determined from the date appearing opposite each employee's name on the "I.A.M. Seniority List" incorporated herein by refer-

ence. The Company will keep such a list up to date and will give the Union opportunity to examine it upon request. The seniority of an employee newly hired or rehired after the date of execution of this Agreement shall be based on his date of hire or his latest date of rehire, respectively. A person transferred into the unit from a position in a different bargaining unit after the date of execution of this Agreement shall have the same credit for seniority as he had in the former position and a person transferred into the unit from a position outside any bargaining unit shall have credit for his service with the Company.

19.2 Notwithstanding other provisions of this Agreement, each Union officer, Chief Steward, *Alternate* Chief Steward, and Steward shall, for purposes of layoff, during his tenure of office be considered the most senior employee in his occupational title, shall be assigned other work which in the opinion of the Company corresponds most closely with the work of his occupational title, and he shall be reclassified into the occupational title covering the work to which so assigned; provided that with respect to any Steward this paragraph shall apply only to the area and the shift or [fol. 15] shifts on which he is assigned for the handling of grievances and as long as there are five (5) employees working in his assigned area. Upon relinquishment of his Union office, each such person shall revert to the position on the seniority list to which his seniority entitles him, and shall be laid off if necessary to permit the recall of an employee with greater seniority who was laid off while such person held office.

19.3 In the event of a layoff, that is, a reduction in the number of employees in a given occupational title in a department, due to a lack of work in such occupational title, such reduction after making shift assignments of employees affected within the department according to seniority, shall be effected as follows:

As used in this Section, the word "location" is defined to mean any one of the following:

(i) All of the presently existing Raytheon plants in Quincy, Massachusetts, or

(ii) All of the presently existing Raytheon plants in Lowell and Bedford, Massachusetts, or

(iii) All of the presently existing Raytheon plants in Waltham, Newton and all other cities and towns in Massachusetts where Raytheon plants are situated.

The most senior employee affected by the reduction in the department shall be the first to exercise his rights of displacement, if any, by meeting in the order hereinafter set forth, the first of the following mutually exclusive provisions to apply:

(a) He will displace the most junior employee in the same occupational title, on the same shift, and in the same location as his own, or, if none,

(b) he will displace the most junior employee in the same occupational title, and in the same location, or, if none,

[fol. 16] (c) he will displace the most junior employee in the same labor grade and in the same location, subject to the provisions appearing in numbered subparagraphs below in this Subsection 19.3, or, if none,

(d) he will displace the most junior employee in the same occupational title as his own, regardless of shift and location, or, if none,

(e) he will displace the employee most junior to him in the same labor grade as his own regardless of shift and location, subject to the provisions appearing in numbered subparagraphs below in this Subsection 19.3, or, if none,

(f) he will displace the employee most junior to him in the lower-paid labor grade nearest his own regardless of shift and location, subject to the provisions appearing in numbered subparagraphs below in this Subsection 19.3.

(1) An employee must have had recorded probable satisfactory experience with the Company, according to Company standards, in the work of a

Tool Maker, Die Maker or Maintenance Machinist occupational title before he will be permitted to displace an employee in any such occupational title.

(2) An employee in a Tool Grinder occupational title must have had recorded provable satisfactory experience with the Company, according to Company standards, in the work of an occupational title other than Tool Grinder before he will be permitted to displace an employee in such other occupational title.

(3) Determination of an employee's provable satisfactory experience in occupational titles other than his own, solely for the purpose of establishing displacement rights under this Section 19.3 may be made by the Company at any time, in ac- [fol. 17] cordance with Company standards. Such determination shall be subject to grievance under Article XVIII, provided that any such grievance must be submitted within seven (7) calendar days following written notice of the determination to the employee and the Union.

(g) Instead of exercising his displacement right as above, an employee may accept separation from active employment with recall right as provided below in Section 19.6. An employee will not be recalled to fill an opening in his occupational title on a shift or at a location which he declined at time of separation unless he notifies the Personnel Department by registered letter that he desires to be considered for such opening.

Each employee exercising his displacement rights must have the ability to perform the work of the occupational title of the employee displaced in accordance with Company standards and failure to demonstrate such ability, within a reasonable period, in the discretion of the Company, shall constitute just cause for discharge.

19.4 Furloughs (temporary layoffs) of not more than two (2) calendar weeks shall not be subject to the provisions

of this Article, but such furloughs, to the extent practicable, shall be divided equitably among the employees concerned.

Each layoff arising out of a cancellation of a Government contract or a cancellation of a subcontract or purchase order under a Government contract may, for one (1) week, be considered a temporary layoff, during which time the Company and the Union shall consult as to the application of this Article.

19.5 When an employee is requested to return to a job in the occupational title from which he was laid off under this Article he shall be notified of the fact by telegram or registered-mail letter sent to his last known address. If [fol. 18] the employee informs the Company, in writing, within three (3) days of the sending of the notice above of his intention to accept the job tendered, the job shall be held open until he can report for duty, but no longer than one (1) week from the date of his reply. If no reply is received by the Company within three (3) days of the sending of the notice, then the Company may proceed to fill the vacancy thereby created.

19.6 In the event of an increase in the number of employees in a particular occupational title within the unit, employees, laid off from jobs designated by such occupational title except those who remained in the same labor grade as prior to the layoff, shall be given an opportunity to return thereto in the inverse order in which the layoff occurred (that is, "last out, first in"), provided, however, that with respect to an employee who displaced another employee in a lower-paid labor grade at the time of layoff, the Company may at the time he is scheduled for recall elect to retain him in his current work assignment, paying him the rate to which he would be entitled in the occupational title from which he was laid off.

19.7 It is the policy of Company to fill such vacancies as remain after operation of the preceding Section by *upgrading* of persons presently employed, but the Company reserves the right (*which right shall not be unreasonably exercised*) in any given case not to apply the policy. Where such vacancies are filled by *upgrading* of persons presently employed, employees in the department *in the next lower-*

paid labor grade in the same occupational grouping in which the vacancy occurs possessing the ability, in accordance with the Company standards, to perform the work of the occupational title in which the vacancy occurred shall be offered the opportunity to fill such vacancies in the order of seniority.

[fol. 19] 19.8 Employees who entered the Armed Forces shall continue to accumulate seniority in accordance with the applicable State or Federal laws, and shall upon release be entitled to reinstatement in the unit to the extent provided by such laws.

19.9 Unless he is on leave of absence for Union business, an employee

(a) shall cease to have any rights based on seniority and his name shall be stricken from the seniority list if:

(i) he quits his employment, or

(ii) he is discharged for cause;

(b) shall cease to have any rights based on seniority, his name shall be stricken from the seniority list, and he shall be terminated if:

(i) with seniority of more than ninety (90) days but less than one (1) year, he is laid off for a period equivalent to his length of service, or

(ii) with seniority of one (1) year but less than two (2) years, he is laid off for a period of more than one (1) year, or

(iii) with seniority of two (2) years but less than four (4) years, he is laid off for a period of more than eighteen (18) months, or

(iv) with seniority of four (4) years or more, he is laid off for a period of more than two (2) years.

(c) the employee is on leave of absence for more than nine (9) months, unless extended by mutual agreement, or

(d) upon being notified by the Company by telephone or by telegram sent to his last known address on the records of the Company to return to work, he fails either to report for work within three (3) workdays or to give the Company satisfactory reason for not reporting, or

[fol. 20] (e) he is absent without proper cause on all the days he was regularly scheduled to work during seven (7) consecutive calendar days beginning with the first day of such absence, or

(f) he fails to return upon expiration of leave of absence.

For all purposes under this Article, an employee, whose seniority has been interrupted as above and who is rehired, shall be regarded as a new employee.

Article XX

Strike and Lockout

20.0 The Union shall not call, sanction or permit any strike, slowdown, or concerted work stoppage within the unit during the term of this Agreement except for (1) the Company's failure to abide by the arbitration provisions of this Agreement, or (2) the Company's failure or refusal to comply with any decision of any board of arbitration established hereunder.

20.1 Should a strike, slowdown or concerted stoppage of work by employees other than those permitted by Section 20.0 hereof occur during the term of this Agreement, the Union, within forty-eight (48) hours after receipt of written notice from the Company, shall be obliged to do the following things only:

(a) the Union shall immediately declare publicly that such action is unauthorized;

(b) the Union shall promptly order its members to cease such action, and shall subject all such members in violation hereof to disciplinary measures appropriate;

(c) the Union shall not question the right of the Company to discipline or discharge employees for engaging in, participating in, or encouraging such unauthorized action, and shall agree that such discipline [fol. 21] and discharge shall not be considered a violation of this Agreement by the Company; provided that an issue of fact as to whether or not any particular employee has engaged in, participated in, or encouraged any such unauthorized action, if disputed, shall be resolved pursuant to the grievance procedure.

20.2 The obligation of the Union shall be limited to the performance of the acts required by Section 20.1, and upon compliance by the Union with the provisions of said Section, the Union and its officers, agents and members shall have no further liability during the term of this contract or thereafter, for any damage suffered by the Company arising from or out of such stoppage or strike.

20.3 The Company shall not lock out any or all of its employees during the term of this Agreement except for: (1) the Union's failure or refusal to abide by the arbitration provisions of this Agreement; or (2) the Union's failure or refusal to comply with the decision of any board of arbitration established hereunder.

. . . . . .

Article XXVII

Duration and Effect

27.0 Except for wage rates and vacation benefits, which shall be effective as of June 1, *1956*, this Agreement shall become effective on the date it is executed and delivered by both parties and shall remain in full force and effect until the *31st day of May, 1959*, and shall thereafter be continued for one (1) year unless notice of termination or a desire to modify or change this Agreement is given in writing by either part at least sixty (60) days before the expiration date. Within ten (10) days of receipt of such notice, a conference shall be arranged for the purpose of negotiating new contract terms or conditions.

[fol. 22] 27.1 If a notice of a desire to modify or change this Agreement is given in accordance with the above Section and negotiations should continue beyond its expiration date, any amendment subsequently agreed upon in such negotiation shall be retroactively effective to the expiration date of this Agreement. If agreement on proposed amendments has not been reached by the expiration date of this Agreement and neither party has given a notice of termination as provided in the above Section, either party may terminate this Agreement, as of a date forty (40) days after the mailing by registered mail to the other party of a notice in writing of such intention to terminate it.

27.2 For the period during which it is effective in accordance with the above Sections, this Agreement amends and supersedes and entirely replaces all previous agreements and understandings, respecting wages, hours, and working conditions of employees in the unit as above defined. Except as is otherwise provided in Section 27.3 hereof, it constitutes the entire agreement and understanding between the Company and the Union on all matters which are properly the subject matter of collective bargaining.

27.3 Either party may at any time propose specific amendments to this Agreement and the parties may mutually agree on amendments and the effective date thereof, provided that neither party shall be obliged to consider such proposed amendments except as provided in Section 27.0 above. Amendments, modifications and additions to this Agreement shall be evidenced by Letters of Mutual Intent which shall be signed by representatives of the parties duly authorized to do so. The waiver of any breach or condition of this Agreement by either party shall not constitute a precedent in the future enforcement of all the terms and conditions herein, and neither party shall be bound by any informal understanding, agreement or practice supplement-[fol. 23] ing this Agreement which has not been set forth in a Letter of Mutual Intent, nor shall the arbitration procedure, provided in Article XVIII of this Agreement, be available for the resolution of any dispute respecting the rights of the parties growing out of any such informal understanding, agreement or practice.

Appendix "A" to Exhibit "A"

Schedule of Wage Rates by Labor Grades

Effective Dates:
June 1, 1956 through May 31, 1957

Labor Gr.	*Min.*	*Step 1*	*Step 2*	*Step 3*	*Max.*
1	$2.46	$2.51	$2.56	$2.61	$2.66
2	2.32	2.37	2.42	2.47	2.52
3	2.19	2.24	2.29	2.34	2.39
4	2.10	2.15	2.20	2.25	2.30
5	1.95	2.00	2.05	2.10	2.15
6	1.78	1.83	1.88	1.93	1.98

The Intervals between progression steps shall be ninety (90) days and the increases shall become effective on the Monday nearest the ninetieth (90th) day until the maximum is reached.

Labor Grade 1—Tool Maker A
Die Maker A
Experimental and Development Machinist A

Labor Grade 2—Tool Maker B
Die Maker B
Experimental and Development Machinist B
Tool Grinder A

[fol. 24]

Labor Grade 3—Tool Maker C
Die Maker C
Experimental and Development Machinist C
Maintenance Machinist A

Labor Grade 4—Machinist A
Maintenance Machinist B
Tool Grinder B

Labor Grade 5—Machinist B
Tool Grinder C

Labor Grade 6—Machinist C

Appendix "A"

Schedule of Wage Rates by Labor Grades

Effective Dates:
June 1, 1957 through May 31, 1958

Labor Gr.	*Min.*	*Step 1*	*Step 2*	*Step 3*	*Max.*
1	$2.54	$2.59	$2.64	$2.69	$2.74
2	2.40	2.45	2.50	2.55	2.60
3	2.26	2.31	2.36	2.41	2.46
4	2.17	2.22	2.27	2.32	2.37
5	2.01	2.06	2.11	2.16	2.21
6	1.84	1.89	1.94	1.99	2.04

Effective Date: June 1, 1958

Labor Gr.	*Min.*	*Step 1*	*Step 2*	*Step 3*	*Max.*
1	$2.62	$2.67	$2.72	$2.77	$2.82
2	2.48	2.53	2.58	2.63	2.68
3	2.33	2.38	2.43	2.48	2.53
4	2.24	2.29	2.34	2.39	2.44
5	2.08	2.13	2.18	2.23	2.28
6	1.90	1.95	2.00	2.05	2.10

[fol. 25]

EXHIBIT B TO COMPLAINT

[Letterhead of International Association of Machinists, Lodge No. 1836.]

Mr. L. E. Woods
Raytheon Manufacturing Company
Soldiers Field Road
Brighton, Massachusetts

November 7, 1958

Dear Mr. Woods:

The Company in violation of Article I, is assigning work embodied within the classifications and job descriptions incorporated by reference in the Agreement to employees outside the bargaining unit at times when the employees in the bargaining unit are ready, willing, and able to perform such work.

The Union protests these assignments and accordingly desires the Company to cease and stop such assignments except to employees classified as Experimental and Development Machinists ABC; Machinists ABC; Maintenance Machinists AB; Die Makers ABC; Tool Makers ABC; and Tool Grinders ABC, and also to make them whole for such losses as have occurred.

The Union is filing this grievance in accord with the provisions of Section 18.2 of the Agreement and failing to reach agreement hereby gives notice to the Company that it intends to arbitrate this grievance in accord with the terms of Section 18.3 and 18.4 of the contract. However, as our General Counsel will be in Boston on November 14th, we desire to meet at that time concerning this matter.

Very truly yours,

RALPH I. LINDQUIST
Ralph I. Lindquist
Recording Secretary

RIL:LF
CC:Papps
McSweeney
Guerin

[fol. 26]

EXHIBIT C TO COMPLAINT

3375 Rev. 8-58

RAYTHEON MANUFACTURING COMPANY

JOB CLASSIFICATION DESCRIPTION

Hourly Pay Roll

IAM — 1836

Code 01-0559
Date June 1, 1953

Occupational Title
Exp and Dev Machinist, Class A — Male X
Dept. & Section Company-wide — Female
Super. Interv'd — Date — Written By: WME
Dept. Head Interv'd — Date — Approved By:
Education: High School Plus Trades Training and/or Apprenticeship
Experience: Approximately Ten Years

Machines, Tools and Equipment Used—

Machine tools including the more common types such as lathes, millers, shapers, grinders and specialized tools such as jig borers, gear and thread cutters, etc. and any special tools needed for the particular job. Welding and soldering equipment, ovens and furnaces for heat treating and brazing, all types of measuring devices such as comparator, surface plates, optical flats, gauge blocks, sine bars, finish gauges, height and depth gauges, all types of calipers, micrometers, etc., hand and bench tools common to the trade.

Summary & Duties

Informally designs, develops, constructs, alters and repairs all types of machines, tools and parts to meet demands of experimental and developmental work, working without direct supervision.

Works from all types of prints —which may be incomplete—, sketches, ideas of engineers and verbal instructions, develops and informally designs from past experience and

background knowledge, all types of machine parts, tools and equipment to fulfill specified requirements. Plans layouts, procedure, machines, equipment and setups to be used. Fabricates and constructs any tools, equipment fixtures, measuring devices, etc. which may be necessary to complete the work. Fabricates and constructs many parts which would ordinarily be done with specialized equipment without specialized equipment, e.g. fabricates gears without gear cutter or hobber. Uses all types of shop math, principles of mechanics and trigonometry to make setups and plan fabrication details and methods such as calculating angles, tapers, coordinates for location and parabolic shapes, indexing, etc. Required to do grinding, fitting, lapping, and honing such as in gear transmission —with no backlash—, linkages, fitting pistons, bearings, etc. A typical job is a housing having many interrelated dimensions, compound angles, approximately 30-40 holes at various angles, sizes and depths including several for bearings. Reviews and interprets print which necessarily is incomplete, inaccurate, and includes many sectional views, plans layout, determines sequence of operations and methods, selects locating holes, surfaces, centerline, etc. Decides type of fixture needed and fabricates e.g. rotating table for milling machine. Cuts buttress thread to fit master gauge and to use as locating centerline. Makes fixture, sets up and end-mills bearing holes. Bearing diameters and concentricity are machine tolerances of .0005 [fol. 27] of an inch. Translates coordinates from angular dimensions and vice versa, to point on surface not related to centerline and drills holes at an angle to one surface and which will intersect a parallel surface at an exact coordinate, the angle of the hole is not related to centerline or radius of the housing. Grinds own tools fixtures etc. as is necessary to perform the job. Performs work on grinders and jig borers to tolerances of .0003 of an inch and lapping and honing work to .00005 of an inch. Works with engineers in the course of the above work since it is of an experimental nature and many changes are made which are not incorporated in the blueprint. Works with all types of metals and other materials to finishes of all

grades and types, —rough to high polish—. Performs related operations such as tempering, hardening and all forms of heat treating, precision assembly, soldering, brazing and welding of all types. The above are the types of operations usually performed but additional operations of equivalent level involving the same general type of work, requiring essentially the same skills, effort and responsibilities and under the same working conditions are performed as departmental requirements change.

All of the above is performed without supervision and in a reasonable length of time as defined in company standards. Uses considerable initiative and ingenuity to work incomplete engineering sketches and instructions and originality in laying out work and in devising methods of procedure to produce specified results. Emphasis is on mental ability initiative, structual visualization, inventiveness and creative ability as often only ideas are furnished.

[fol. 28]

3375 Rev. 8-58

RAYTHEON MANUFACTURING COMPANY

JOB CLASSIFICATION DESCRIPTION

Hourly Pay Roll

IAM — 1836

Code 02-0560
Date June 1, 1953

Occupational Title
Exp and Dev Machinist, Class B — Male X
Dept. & Section Company-wide — Female
Super. Interv'd — Date — Written By: WME
Dept. Head Interv'd — Date — Approved By:
Education: High School Plus Trades Training and/or Apprenticeship

Experience: Approximately Four to Five Years
Machines, Tools and Equipment Used—

Machine tools including the more common types such as lathes, milling machines, shaper, grinders and specialized

tools such as jig borers, gear and thread cutters, etc., and specialized hand tools as required. Welding, brazing and soldering equipment, ovens. Precision measuring instruments such as height gauges, depth gauges, gauge blocks, sine bars, plug gauges, calipers, micrometers, etc.

Summary & Duties

Informally designs, develops, constructs, alters and repairs various machines, tools and parts for development and experimental needs, usually working without supervision but occasionally working with the aid of higher-rated workers or supervisory personnel.

Works from prints, sketches and verbal instructions to fabricate parts and assemblies for experimental purposes. Constructs, alters and repairs parts for machines, tools and equipment. Utilizes common machine tools such as lathes and millers to machine parts to tolerances which are approximately .0005 of an inch. Works to tolerances of .0005 of an inch when working with jig borer. When grinding, lapping and honing, finishes surfaces to tolerances of approximately .0001 of an inch. Usually plans sequence of operations to be utilized, but occasionally requires assistance in devising, construction and fabrication of intricate assembly work such as assembly of precision gear trains and linkages. Uses shop mathematics to calculate angles, tapers, indexing etc. and to compute and lay out dimensions on parts to be machined or otherwise fabricated.

Job differs from that of experimental and developmental machinist, A in that the B man generally works to looser tolerances as indicated above, and usually requires a longer period of time to perform any specific job adequately than would be required by an A man performing the same job adequately, the B man plans and performs most of the sequences of operations performed by the A man but occasionally requires assistance in planning the sequence of operations and in making intricate setups, the B man is not to be expected to utilize the more complex inspection devices such as optical flats, super-micrometers, etc.

[fol. 29]
3375 Rev. 8-58

RAYTHEON MANUFACTURING COMPANY

JOB CLASSIFICATION DESCRIPTION

Hourly Pay Roll

IAM — 1836

Code 03-0561
Date June 1, 1953

Occupational Title
Exp and Dev Machinist, Class C — Male X
Dept. & Section Company-wide — Female
Super. Interv'd — Date — Written By: WME
Dept. Head Interv'd — Date — Approved By:
Education: High School Plus Trades Training and/or Apprenticeship
Experience: Approximately Three to Four Years
Machines, Tools and Equipment Used—

Machine tools such as milling machines, lathes, shapers, drill presses, grinder, etc., welding and soldering equipment, ovens, precision measuring devices such as micrometers, calipers, height gauges, plug gauges, etc.

Summary & Duties

Sets up and operates above-mentioned machines and equipment to make, rework and fit experimental and development parts, performing planning and layout as required and working under supervision on all but the simpler jobs.

Works from rough sketches, prints and oral instructions to perform machining and other fabricating operations. Plans most operations but occasionally requires assistance from higher-rated workers and supervisory personnel in planning sequences and in making intricate setups. Utilizes common machine tools such as millers, lathes, etc. to machine parts to tolerances which are approximately .0005 of an inch. Grinds, reams, etc., surfaces and holes to

tolerances of approximately .0001 of an inch. Performs simple welding and soldering as necessary. Cuts gears on milling machine only, does not use gear hobber or cutters. Uses simple shop mathematics to calculate angles, tapers, etc.

Job differs from that of experimental and development machinist, B in that the C man generally works to looser tolerances, as indicated above, the C man does not utilize a jig borer or any gear cutters or hobbers, he performs no lapping. The parts which the class C man fabricates are limited in complexity by the tolerances allowed and by the machines, tools and equipment which he uses.

Job differs from that of machinist, B in that the experimental and development machinist, C plans and performs work on experimental and development parts and assemblies and is required to plan and use a differing sequence of operation with each new part fabricated.

[fol. 30]

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3375 Rev. 8-58
Replaces IAM — 16,
03-0562, Dated
June 1, 1953.

RAYTHEON COMPANY

JOB CLASSIFICATION DESCRIPTION

Hourly Pay Roll

IAM — 1836

Code 02-0563
Date Dec. 1, 1958

Occupational Title
Maintenance Machinist, Class A
Dept. & Section
Massachusetts Locations
Male X
Female
Super. Interv'd Date
Written By: GEM
Dept. Head Interv'd Date
Approved By: FLP

FM JDJ MA JM
CA JGD FB WEC
CDH RTL KS JB
TD JBM WLP DJF
VS JLM FM ON
WAD EHR LOT
WFC HP JE FH
TJN WT

Education: High School Plus Trades Training
Other

Experience: Over Five Years.

Machines, Tools and Equipment Used—

Machine tools such as milling machines, lathes, drill presses, shapers, radial drills, boring mills, grinders, flaring tools and tube benders, hand tools such as hydraulic gauges, speed indicators, strobolites, wrenches, screw drivers, hammers, punches, electric drills, gear pullers, micrometers, scales, verniers, levels, straight edges and other hand tools and precision measuring instruments common to the machine trade.

Summary & Duties

Repairs, alters and adapts a wide variety of sometimes complicated mechanical, electronic controlled and hydraulic actuated, standard and special machines used in the company. From a thorough knowledge of machine tool practices and over five years experience, performs all the required operations to install, maintain, diagnose trouble and make the necessary repairs to these machines.

Works from prints, sketches, models, machine tool manufacturers instructions and diagrams, and verbal instructions to diagnose trouble and make the necessary replacement of parts and repairs to a wide variety of machinery located in the company. Some examples of the more complex machines are various types of engine lathes with electronic, hydraulic, air and four sided tracer attachments, horizontal and V type air compressors, hydraulic presses, hydraulic milling machines, precision boring, grinding and

honing equipment, automatic screw machines with mechanical adjustments to produce required tolerances, oil reclaimers, vacuum pumps and installation of blades on large sheet metal shears. Troubleshoots hydraulic machines with gauges to locate malfunctioning, and works with others to service electronic controlled machinery. Uses speed indicators to check spindle speeds and strobolites to check timing cycle of machines. Works with production and industrial engineers to develop and adapt special equipment for production. When new replacement parts are not available, sets up and operates the above machine to reproduce any necessary part to required close tolerances. Makes jigs, fixtures and any special tools necessary for completion of work. Moves heavy machine parts as necessary to disassemble and assemble machine tools. Uses spirit level to properly install equipment in required location. Involves a wide range of bench and hand operations and requires considerable skill and thorough knowledge of the machinist [fol. 31] trade to tear down and reassemble complex mechanisms; diagnose and remedy trouble quickly on regular or emergency repairs. Performs hand operations such as filing, fitting, and bearing scraping. Selects the proper type of materials to be used such as hardenable or soft steels, non-ferrous bearing metals, magnetic or non-magnetic stainless steel. Has some knowledge of welding, brazing, and heat treating of metals. Fabricates various types of plastic and other materials as required. Uses a wide variety of precision measuring tools in the accomplishment of these tasks. The above are the types of operations usually performed but additional operations of equivalent level, involving the same type of work, requiring essentially the same skills, effort and responsibilities and under the same working conditions are performed as production requirements change.

The maintenance machinist, class A differs from class B in that class —A— works to closer tolerances, services more intricate mechanisms and performs precision fitting, scraping of bearings, and requires experience with hydraulic and electronic controlled machinery.

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RAYTHEON MANUFACTURING COMPANY

JOB CLASSIFICATION DESCRIPTION

Hourly Pay Roll

IAM — 1836

Code 04-0564
Date June 1, 1953

Occupational Title
Machinist Class A — Male X
Dept. & Section Company-wide — Female
Super. Interv'd — Date — Written By: WME
Dept. Head Interv'd — Date — Approved By:
Education: High School Plus Trades Training and/or Apprenticeship.
Experience: Approximately Three and a Half Years.
Machines, Tools and Equipment Used—

Cthmon hand tools, such as lathes, millers, shapers, grinders, planers, power drills, any special machine tools needed, power tools, such as filers, saws, welding, brazing and soldering equipment, ovens, wide variety of precision measuring instruments, machinists bench tools, etc.

Summary & Duties

Sets up and operates the above-mentioned machines to process and rework machined parts, fixtures and tools to very close tolerances —.0005 of an inch—, plans sequences of operations working with minimum of supervision.

Works to written instructions, sketches and prints. Performs highly diversified machining operations such as boring, grinding, milling, threading —inside and outside—, tapering, etc. Performs work on machined parts, forgings and castings which are generally complex in nature and critically dimensioned, and which involve a complete scope of machine work. Frequently operates any or all of the above-mentioned machines while working on any unit, de-

termining and maintaining the proper operational sequences at all times. Sets up all tools, jigs and fixtures. Determines the appropriate feeds and speeds for all operations. When necessary, fits and assembles precision parts through progressive machining operations. Sharpens own tools to attain specified finishes for all materials processed. Occasionally performs simple welding, brazing, silver soldering and heat treating. Works with minimum of supervision. Typical jobs are as follows— makes parts which require chasing an accurate thread and boring for a press fit bearing, cutting gears which involves making up a blank with proper angles and cutting with index head. Performs machining operations on various metals and plastics. These are the types of operations usually performed but additional operations of equivalent level involving the same general type of work, requiring essentially the same skills, effort and responsibilities and under the same working conditions are performed as production requirements change.

Must possess knowledge of shop mathematics, use of charts and tables, efficient planning of shop work, dimensions and uses of standard bolts, screws, threads and tapers. Must be familiar with the working properties of metals and [fol. 33] other materials and know the uses of coolants and cutting oils. Complete knowledge of precision measuring instruments such as micrometers, calipers, etc. is also required. Operator must interpret complex prints and use rough sketches when necessary.

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RAYTHEON MANUFACTURING COMPANY

JOB CLASSIFICATION DESCRIPTION

Hourly Pay Roll

IAM — 1836

Code Arbitrary 04-0565
Date June 1, 1953

Occupational Title
Maintenance Machinist, Class B — Male
Dept. & Section Company-wide — Female
Super. Interv'd — Date — Written By: WRS
Dept. Head Interv'd — Date — Approved By:
Education: High School or Equivalent — Other
Experience: Approximately Two Years
Machines, Tools and Equipment Used—

Machine tools such as lathes, millers, shapers, drill press, grinders, hand tools such as wrenches, screwdrivers, hammers, punches, electric drills, micrometers, scales, level, and other hand tools and precision measuring instruments common to the machine trade.

Summary & Duties

Repairs and replaces parts on machine tools, sheet metal power tools and other production machine tools. Disassembles and assembles machines where mechanisms are not of a complex nature and where no skilled fitting of bearings and spindles or scraping of bearings is required. Performs machining operations on repair parts using a variety of machine tools where tolerances are fairly liberal and setups not difficult.

Works from rough sketches, prints, and oral instructions to perform machining, repairing, and assembly operations. Plans most operations but occasionally requires assistance

from higher-rated workers and supervisory personnel in planning sequence of operations, fitting and aligning and in making intricate setups. Utilize common machine tools such as lathes, millers, etc., to machine parts to tolerances which are approximately .005 of an inch and occasionally .001 of an inch where setups are not difficult. Uses a variety of precision measuring instruments. The above are the types of operations usually performed but additinal operations of equivalent level, involving the same general type of work, requiring essentially the same skills, effort and responsibilities and under the same working conditions are performed as production requirements change.

The maintenance machinist, class B differs from the class A in that the class B maintenance machinist sets up and operates machine tools to perform less complex work equivalent to a machinist, class B or does not perform skilled repair, diagnosis of trouble and skilled fitting of parts during reassembly. In order to qualify as a maintenance machinist, class A a maintenance machinist, B is required to do both complex machining operations and intricate machine tool repairs as is outlined in the job description for maintenance machinist, A.

[fol. 35]

3375 Rev. 8-58

RAYTHEON MANUFACTURING COMPANY

JOB CLASSIFICATION DESCRIPTION

Hourly Pay Roll

IAM — 1836

Code 05-0566
Date June 1, 1953

Occupational Title
Machinist, Class B — Male X
Dept. & Section Company-wide — Female
Super. Interv'd — Date — Written By: WME
Dept. Head Interv'd — Date — Approved By:
Education: High School Plus Trades Training and/or Apprenticeship.

Experience: Approx. Two Years
Machines, Tools and Equipment Used—

Common machine tools, such as lathes, millers, shapers, grinders, planers, power drills, any special machine tools needed, power tools such as filers, saws, welding, brazing and soldering equipment, oven, wide variety of precision measuring instruments, machinists bench tools, etc.

Summary & Duties

Plans operational sequences and sets up and operates the above-mentioned machines to fabricate metal parts which involve a series of progressive machining operations, works to minimum tolerances of approximately .001 of an inch.

Works to written instructions, specifications, blueprints and sketches, selects proper material, lays out work using variety of machinists hand tools and precision measuring instruments, sets up and operates any of above-listed machines, makes standard shop computations relating to dimensions of work, tooling, feeds and speeds of machining, understands the working properties of common metals. Work involves some fitting and assembly of parts, occasionally performs heat treating, brazing and acetylene welding. Typical jobs are as follows— making collapsible arbor which requires cutting left-hand thread, milling and grinding channel iron to proper dimensions —.005 of an inch taper, fit parts together—, making rollers for coil winding machines which involves cutting equally spaced grooves with 90 degree angles. These are the types of operations usually performed but additional operations of equivalent level, involving the same general type of work requiring essentially the same skills, effort and responsibilities and under the same working conditions are performed as production requirements change.

Job differs from that of machinist, A in that the B man works to looser tolerances, as indicated above. The B man requires supervision in planning sequences of operations and in setting up equipment when performing all but the simpler jobs.

[fol. 36]
3375 Rev. 8-58

RAYTHEON MANUFACTURING COMPANY

JOB CLASSIFICATION DESCRIPTION

Hourly Pay Roll

IAM — 1836

Code 06-0567
Date June 1, 1953

Occupational Title
Machinist, Class C — Male X
Dept. & Section Company-wide — Female
Super. Interv'd Date — Written By: WME
Dept. Head Interv'd Date — Approved By:
Education: High School Plus Trades Training and/or Apprenticeship.
Experience: Approximately One Year.

Machines, Tools and Equipment Used—

Common machine tools, such as lathes, millers, shapers, grinders, planers, power drills, any special machine tools needed, power tools, such as filers, saws, wide variety of precision measuring instruments, machinists bench tools, etc.

Summary & Duties

Sets up and plans operational sequences under supervision and operates lathes, millers, and a number of other machines listed above in the production of a wide variety of parts, or in the simpler aspects or portions of the construction, repair and maintenance of special or standard tooling.

Works from prints, complete sketches, or verbal instructions. Uses charts, tables, handbook formulae and shop mathematics. Occasionally makes, under supervision, very simple jigs, fixtures, and special tools necessary for completion of work. Selects, sharpens, and prepares tools, cutters and drills. Frequently works to tolerances as close

as .002 of an inch. Uses a variety of precision measuring instruments. Must understand the construction of typical machine tools. Work frequently includes some fitting, assembling, and re-operation of assemblies. Must be able to use all machinists hand tools. Understanding of the working properties of the metals and alloys most commonly used and of heat treating is necessary.

Job differs from that of machinist, B in that the C man works to looser tolerances as indicated above, he usually works on duplication of parts or on manufacture of replacement parts for machines and equipment, sequences of operations are usually prescribed and mathematical calculations are restricted to several interrelated tolerances only.

[fol. 37]

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RAYTHEON COMPANY

JOB CLASSIFICATION DESCRIPTION

Hourly Pay Roll

IAM — 1836

Code 01-6120
Date June 1, 1953

Occupational Title
Tool Maker, Class A — Male X
Dept. & Section Company-wide — Female
Super. Interv'd — Date — Written By: WME
Dept. Head Interv'd — Date — Approved By:
Education: High School Plus Trades Training and/or Apprenticeship.
Experience: Approximately Eight Years.
Machines, Tools and Equipment Used—

Machine tools such as bench lathes, engine lathes, shapers, millers, drill presses, filers, do-all saw, jig borers, surface grinders, cylindrical grinders, bench grinders, shadow-

graph, heat treating equipment, etc., complete set of bench and hand tools common to the trade, precision measuring instruments such as verniers, micrometers, dial indicators, micro-limit gauges and others common to the machine trade.

Summary & Duties

Develops, informally designs, fabricates, and repairs highly intricate tools, jigs, fixtures, and gauges. Work is usually to extremely close tolerances of plus/minus .0001 inches or less on finishing work. Includes highly skilled fitting, timing and adjusting. A large part of the work is experimental and extremely intricate and at times no readily measurable tolerance can be allowed.

Works without direct supervision and refers, if necessary, to blueprints and rough sketches, plans procedure to be followed, selects proper metal and other materials and lays out work using precision measuring instruments, shop mathematics, and pertinent formulae. Frequently works from past experience and background knowledge to develop and informally design tools, jigs, fixtures, and gauges, often works without the aid of prints or sketches. Sets up and operates all types of machines as listed above without supervision and selects, sharpens and prepares tools, cutters, and drills. Designs and makes any special tools or fixtures that may be necessary to complete a project. Makes own tryouts. Uses miscellaneous hand tools and measuring equipment such as those listed above. Work involves skilled technique in fitting parts, a knowledge of the working properties of metals, and familiarity with heat treating. Typical jobs include complex production gauges, intricate jigs and fixtures with numerous interrelated locations and other tools, jigs and fixtures with irregular surfaces requiring highly-skilled machining and finishing work. These are the types of operations usually performed but additional operations of equivalent level, involving the same general type of work, requiring essentially the same skills, effort and responsibilities and under the same working conditions are performed as production requirements change.

[fol. 38]

6-53
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RAYTHEON COMPANY

JOB CLASSIFICATION DESCRIPTION

Hourly Pay Roll

IAM — 1836

Code 01-6121
Date June 1, 1953

Occupational Title
Die Maker, Class A — Male X
Dept. & Section Company-wide — Female
Super. Interv'd — Date — Written By: WMF
Dept. Head Interv'd — Date — Approved By:
Education: High School Plus Trades Training and or Apprenticeship.
Experience: Approximately Eight Years.
Machines, Tools and Equipment Used—

Machine tools such as bench lathes, engine lathes, shapers, millers, drill presses, filers, do-all saw, jig borers, surface grinders, cylindrical grinders, bench grinders, shadowgraph, heat treating equipment, complete set of bench and hand tools common to the trade, precision measuring instruments such as verniers, micrometers, dial indicators, microlimit gauges, etc.

Summary & Duties

Develops, informally designs and makes highly intricate dies. All work is usually to extremely close tolerance of plus or minus .0001 or less on finishing work. Includes highly skilled fitting, timing, and adjusting. A large part of the work is experimental and extremely intricate, and at times, no readily measurable tolerance can be allowed.

Works without direct supervision and refers, if necessary, to blueprints and rough sketches, plans procedures to be followed, selects proper metal and other materials

and lays out work using precision measuring instruments, shop mathematics and pertinent formulae. Sets up and operates all types of machines as listed above. Selects, sharpens, and prepares tools, cutters, and drills. Designs and makes any special tools or fixtures that may be necessary to complete a project. Makes own tryouts. Uses miscellaneous hand tools, and precision measuring equipment, such as those listed above. Work involves skilled technique in fitting parts, a knowledge of the working properties of metals and of metal flow in dies, and knowledge of heat treating. Typical jobs include compound dies, deep drawing dies, various progressive dies, compound dies for parts with delicate or very close tolerance. These are the types of operations usually performed but additional operations of equivalent level, involving the same general type of work, requiring essentially the same skills, effort and responsibilities and under the same working conditions are performed as production requirements change.

Analyzes intricate drawings and determines generally how work is to be laid out. Frequently required to develop and fabricate dies to perform specified operations on parts, working without print or sketches of the die to be made, but rather working with only the part itself or a print of the part as a reference.

[fol. 39]

6-53
3375 Rev. 8-58

RAYTHEON COMPANY

JOB CLASSIFICATION DESCRIPTION

Hourly Pay Roll

IAM — 1836

Code 02-6122
Date June 1, 1953

Occupational Title
Tool Maker, Class B — Male X
Dept. & Section Company-wide — Female
Super. Interv'd — Date — Written By: WMF
Dept. Head Interv'd — Date — Approved By:
Education: High School Plus Trades Training
Other
Experience: Approximately Six Years.
Machines, Tools and Equipment Used—

Machine tools such as bench lathes, engine lathes, shapers, millers, drill presses, filers, do-all saw, jig borers, surface grinders, cylindrical grinders, bench grinders, shadowgraph, heat treating equipment etc. Complete set of bench and hand tools common to the trade, precision measuring instruments such as verniers, micrometers, dial indicators, micro-limit gauges and others common to the machine trade.

Summary & Duties

Plans, constructs, and repairs a wide variety of tools, jigs, fixtures, and gauges usually to very close tolerances of plus/minus .0002 inches on finishing work. Includes the construction of very complex units where the design is furnished, and the roughing of the most complex pieces for finishing by tool maker A is also included.

Works under direction of foreman or tool maker A and refers to blueprints and rough sketches for information. Lays out work using precision measuring instruments, shop mathematics, geometry, and pertinent formulae. Sets up

and operates all types of machines as listed above. Selects, sharpens, and prepares tools, cutters, and drills. Makes own tool tryouts. Uses miscellaneous hand tools and measuring equipment, such as those listed above. Work involves skilled technique in fitting parts and requires knowledge of heat treating principles and practices. Typical jobs include gauges with four or more interrelated gauging details, jigs, and fixtures with interrelated locations of four or more positions. These are the types of operations usually performed but additional operations of equivalent level, involving the same type of work, requiring essentially the same skills, effort and responsibilities and under the same working conditions are performed as production requirements change.

Job differs from that of tool maker A in that the —B— man works to looser tolerances as indicated above, he works from sketches and prints and does not construct intricate tools, jigs and fixtures from engineers ideas alone, he is not, therefore, expected to do any design work as in tool maker A. While —A— men rough and finish the most complex tools, the —B— men only roughs this work and it will be finished by the —A— man.

[fol. 40]

6-53
3375 Rev. 8-58

RAYTHEON COMPANY

JOB CLASSIFICATION DESCRIPTION

Hourly Pay Roll

IAM — 1836

Code 02-6123
Date June 1, 1953

Occupational Title
Die Maker, Class B

Male X
Female

Dept. & Section Company-wide
Super. Interv'd Date
Dept. Head Interv'd Date

Written By: WME
Approved By:

Education: High School Plus Trades Training and/or Apprenticeship.
Experience: Approximately Six Years.
Machines, Tools and Equipment Used—

Machine tools such as bench lathes, engine lathes, shapers, millers, drill presses, filers, do-all saw, jig borers, surface grinders, cylindrical grinders, bench grinders, shadowgraph, heat treating equipment, complete set of bench and hand tools common to the trade, precision measuring instruments, such as verniers, micrometers, dial indicators, micro-limit gauges, etc.

Summary & Duties

Plans, constructs, and repairs a wide variety of dies usually to very close tolerances of plus or minus .0002 on finishing work. Includes the construction of very complete units where the design is furnished, and roughing in the most complex pieces for finishing by die maker, class A is also included in this classification.

Works under direction of foreman, or die maker, class A, who frequently makes layout for die. Refers, if necessary, to blueprints and sketches. Lays out work using precision measuring instruments, shop mathematics, geometry and pertinent formulae. Sets up and operates all types of machines listed above. Selects, sharpens, and prepares tools, cutters, and drills. Makes own die tryouts. Uses miscellaneous hand tools and precision measuring equipment, such as those listed above. Typical jobs include compound cutting dies with numerous perforated openings. These are the types of operations usually performed but additional operations of equivalent level, involving the same general type of work, requiring essentially the same skills, effort and responsibilities and under the same working conditions are performed as production requirements change. Must possess knowledge of metal flow, heat treating, working properties of metals, etc. in order to determine clearances, etc. for drawings and perforating dies.

Job differs from that of die maker A in that the —B— man works to looser tolerances as indicated above. The

—A— man frequently analyzes intricate drawings and determines generally how the work is to be laid out, and the —B— man makes the individual elements as directed by the —A— man. On any given compound cutting or drawing dies or dies of similar complexity, the —B— man consistently requires more time to complete the job than does an —A— man doing the same work.

[fol. 41]

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3375 Rev. 8-58

RAYTHEON COMPANY

JOB CLASSIFICATION DESCRIPTION

Hourly Pay Roll

IAM — 1836

Code 02-6124
Date June 1, 1953

Occupational Title
Tool Grinder, Class A — Male X
Dept. & Section Company-wide — Female
Super. Interv'd — Date — Written By: WME
Dept. Head Interv'd — Date — Approved By:
Education: High School Plus Trades Training and/or Apprenticeship.
Experience: Approximately Six Years.
Machines, Tools and Equipment Used—

All types of surface grinders, internal and external grinders, universal grinders, tool grinders, micrometers, vernier caliper, height and depth gauges, and other precision measuring instruments, and hand tools common to the machine trade.

Summary & Duties

Sets up and operates all of the above equipment to perform precision grinding operations —tolerances of approximately plus or minus .00015 of an inch or less— on tools,

dies, fixtures, and gauges. Works from all types of blueprints, sketches, and verbal instructions, makes original and new setups on all of the above equipment, selects proper wheel type and size depending upon material to be ground and surface speed. Makes necessary calculations of angles using fundamental principles of trigonometry and shop math. Determines and performs a sequence of operations to grind to prescribed tolerances.

Performs operations such as grinding a circular form tool cutter where several grooves are cut at varying depths and each groove is interrelated to each other and to a reference plane. Plans layout and method of operation, sets up and operates Leblond cutter grinder and cylindrical grinder to grind as in above example. Circular form tool is made of high speed steel and tolerance of .0003 is held. In this case a fixture is made by a toolmaker but the tool grinder, class A works with the toolmaker to decide on type and dimensions of fixture to be fabricated. Another example is grinding the male and female portions of a thread cutter for a thread miller. In this case, the tool grinder, class A starts from a machined blank, plans and performs the necessary heat treating operations at the proper sequences of operation. On P.T. Dwg. T18.186.2 an anvil, there is a blending of two radii —1/32 and 1/6— to be ground and at the same time holding the I.D. and O.D. to a tolerance of .0002. A trigonometric calculation must be made to determine the correct angle to grind a taper and the two component parts must be lapped to give a slide fit in which no play is allowed. On a Pope heat quill for A B and S grinder, a taper is required to an angle of 1 degree, 25 minutes and 55 seconds, selective fit on the O.D. to I.D. These are typical jobs performed by tool grinder, class A, but many other types of operations such [fol. 42] as thread grinding, light press fits, etc. are also done by the worker in this classification. Grinds precision angular or stepped sectional die parts where mating parts must be a perfect fit —fit so that angular and step faces meet with no open space along edges where sectional parts

come together—. Uses all types of measuring devices to insure that work is within limits. These are the types of operations usually performed but additional operations of equivalent level, involving the same general type of work, requiring essentially the same skills, effort and responsibilities and under the same working conditions are performed as production requirements change.

The tool grinder, class A, works without supervision in making the setups, planning work, selecting tools and in checking work. He must perform this work within a reasonable time limit as defined by company standards. The tool grinder, class A, differs from the class B in that the class A usually works to tolerances of .0003 or less, —uses a working knowledge of trigonometry and shop math to calculate angles, tapers, etc.— works to high polish finishes, does close fitting work when lapping may be required and selects, without aid, all grinding wheels and setups necessary to perform the work.

[fol. 43]

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3375 Rev. 8-58

RAYTHEON COMPANY

JOB CLASSIFICATION DESCRIPTION

Hourly Pay Roll

IAM — 1836

Code 03-6125
Date June 1, 1953

Occupational Title
Tool Maker, Class C — Male X
Dept. & Section Company-wide — Female
Super. Interv'd — Date — Written By: WME
Dept. Head Interv'd — Date — Approved By:
Education: High School Plus Trades Training and/or Apprenticeship.
Experience: Approximately Four and One Half Years.

Machines, Tools and Equipment Used—

Machine tools such as bench lathes, engine lathes, sharpers, millers, drill presses, filers, do-all saw, jig borers, surface grinders, cylindrical grinders, bench grinders, shadowgraph, heat treating equipment, complete set of bench and hand tools common to the trade, precision measuring instruments.

Summary & Duties

Lays out, constructs, and repairs a limited variety of tools, jigs, fixtures and gauges, working usually to tolerances of plus or minus .0003 on finishing work. Includes skilled fitting of parts and includes performance of difficult tool room operations.

Works under direction of foreman from detailed prints or complete sketches. Lays out work using shop mathematics and sets up and operates all machines as listed above. Selects, sharpens, and prepares tools, cutters, drills, etc. Generally carries assignments through to completion, but finish grinding to very fine tolerances may be performed by others. Typical jobs include single milling fixtures, box and stand type drill jigs, average location and profile gauges. These are the types of operations usually performed but additional operations of equivalent level, involving the same general type of work, requiring essentially the same skills, effort and responsibilities and under the same working conditions are performed as production requirements change.

Job differs from that of tool maker B in that the —C— man works to looser tolerances as indicated above. He only occasionally works from sketches, and when he is so required, tools to be made are of basically simple design with only elementary heat treating operations and standard sequences of machining operations required and the sketch is concise and complete. The —C— man is frequently required to rough out tools to be finished by higher-rated tool makers. Planning the sequence of operations is

supervised when work is to be performed on all but standard or duplicate runs. The tool maker C is one with the prerequisite qualifications and abilities of a machinist A, but differs from experimental and development machinist, class C in that he specializes in tooling rather than in experimental and developmental work on machines, equipment and products, as the experjmental and development machinist, class C does.

[fol. 44]

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3375 Rev. 8-58

RAYTHEON COMPANY

JOB CLASSIFICATION DESCRIPTION

Hourly Pay Roll

IAM — 1836

Code 03-6126
Date June 1, 1953

Occupational Title
Die Maker, Class C — Male X
Dept. & Section Company-wide — Female
Super. Interv'd — Date — Written By: WME
Dept. Head Interv'd — Date — Approved By:
Education. High School Plus Trades Training and/or Apprenticeship.
Experience: Approximately Four and One Half Years.
Machines, Tools and Equipment Used—

Machine tools such as bench lathes, engine lathes, shapers, millers, drill presses, filers, do-all saw, jig borers, surface grinders, cylindrical grinders, bench grinders, shadowgraph, heat treating equipment, complete set of bench and hand tools common to the trade, precision measuring devices.

Summary & Duties

Lays out, constructs, and repairs a limited variety of dies usually to close tolerances of plus or minus .0003 on finish-

ing work. Includes skilled fitting of parts and performing difficult tool room operations.

Works under direction of foreman from detailed prints or complete sketches. Lays out work using shop mathematics and sets up and operates all machines listed. Selects, sharpens, and prepares tools, cutters, drills, etc. Generally carries assignments through to completion but finish grinding to very fine tolerances may be performed by others. Typical jobs include single and combination perforating and blanking dies. This is the type of operation usually performed but additional operations of equivalent level, involving the same general type of work, requiring essentially the same skills, effort and responsibilities and under the same working conditions are performed as production requirements change.

The die maker, class C, has all the basic training and abilities of a machinist, class A, but differs otherwise in that he specializes in the construction, repair, and maintenance of dies for forging, punching, stamping, or other metal forming work rather than in equipment construction and maintenance, or in production setups and operations.

Job differs from that of die maker B in that the C man works to looser tolerances as indicated above. He works only from detailed prints or complete sketches and is not required to interpret complex assembly drawings. He plans and performs sequences of operations only under the supervision of higher-rated workers of supervisory personnel.

[fol. 45]

6-53
3375 Rev. 8-58

RAYTHEON COMPANY

JOB CLASSIFICATION DESCRIPTION

Hourly Pay Roll

IAM — 1836

Code 04-6127
Date June 1, 1953

Occupational Title
Tool Grinder, Class B — Male X
Dept. & Section Company-wide — Female
Super. Interv'd Date — Written By: WME
Dept. Head Interv'd Date — Approved By:
Education: High School Plus Trades Training and/or Apprenticeship.
Experience: Four to Five Years.
Machines, Tools and Equipment Used—

Surface grinders, internal and external grinders, universal grinders, tool grinders, micrometers, vernier calipers, height and depth gauges, and other precision measuring instruments, hand tools common to the machine trade.

Summary & Duties

Sets up and operates all of the above equipment to perform grinding operations —tolerances of approximately plus or minus .0015 or more— on tools, dies, fixtures and gauges. Works from all types of blueprints, sketches, and verbal instructions, sets up all of the above equipment. Selects wheel types and sizes considering surface speed on only those materials upon which he has worked previously at Raytheon or on the material usually ground in the shop. Occasionally requires the aid of tool grinder, class A, or supervision to select wheels for unfamiliar materials. Determines and performs a sequence of operations to grind to prescribed tolerances.

Performs such operations as are prescribed in the grinding of a special counterbore, where the tolerances on shaft and sleeve are plus or minus .0005 the taper is a standard Morse taper and the tolerance on the cutting edges are over .0005, cutting edge is of irregular shape —P.T. Dwg. No. TA20-123, a special cutting tool—, the thickness tolerance is plus or minus .005, the angle of fifteen degrees is not closely held but determined by setting the machine to the fifteen degree angle. The tolerance is then determined by the machine and is approximately .001 or .002. These are typical jobs performed by the tool grinder, class B but many other operations such as grinding and resharpening special cutting tools, close tolerance grooving tools, special milling cutters, gear cutters, special counterbores, tapers, reamers, and various special types of cutting tools, etc. are also done by the worker in this classification. Uses all types of measuring devices to insure that work is within limits. These are the types of operations usually performed but additional operations of equivalent level, involving the same general type of work, requiring essentially the same skills, effort and responsibilities and under the same working conditions are performed as production requirements change.

[fol. 46] The tool grinder, class B, works without direct supervision in making setups, planning work, selecting tools and in checking work but occasionally checks with class A tool grinder in choice of wheels to make trigonometric calculations, etc. He must perform this work within a reasonable time limit as defined by company standards. The tool grinder, class B differs from the class A in that the class B usually works to tolerances of .003 or more, does not make trigonometic calculations, does not work to high polish finishes, does not do close fitting where lapping is required, and occasionally requires assistance in selection of wheels, or setups necessary to perform the work.

[fol. 47]

6-53
3375 Rev. 8-58

RAYTHEON COMPANY

JOB CLASSIFICATION DESCRIPTION

Hourly Pay Roll

IAM — 1836

Code 05-6128
Date June 1, 1953

Occupational Title
Tool Grinder, Class C — Male X
Dept. & ~~Section~~ Company-wide — Female
Super. Interv'd Date — Written By: WME
Dept. Head Interv'd Date — Approved By:
Education: High School Plus Trades Training and/or Apprenticeship.
Experience:
Machines, Tools and Equipment Used—

Surface grinders, tool grinder, internal and external grinders, hand tools common to the trade, micrometers, scales, depth gauges and other measuring instruments common to the machine trade.

Summary & Duties

Sets up and operates above equipment to perform grinding operations with liberal tolerances —plus or minus .0005 or more— Works from blueprints, sketches and verbal instructions, sets up a limited amount of equipment listed above. Wheel type, size and surface speed is specified. Occasionally requires higher grade grinder of supervision to assist in the setup or in planning the sequent of operations to grind prescribed tolerances.

Performs such operations as prescribed in the grinding of a base plate where a surface is to be ground. Work con-

sists primarily of grinding tool bits, standard milling cutters, or surface where the work does not require close tolerances and the finish is not critical. These are the types of operations usually performed but additional operations of equivalent level, involving the same general type of work requiring essentially the same skills, effort and responsibility and under the same working conditions are performed as production requirements change.

The tool grinder, class C differs from the tool grinder, class B in that the class C grinder sets up and operates only a limited amount of equipment, tolerances are usually plus or minus .0005 or more, wheel types, sizes and speeds are prescribed, and the finish is not specified. Tool grinder, class C works with a minimum of supervision to perform operations described above within a reasonable limit as defined by company standards. Checks and receives assistance from higher rated men or supervision on setups, operations, tools, drawing explanations, etc.

[fol. 48]

EXHIBIT D TO COMPLAINT

[Letterhead of International Association of Machinists, Washington, D.C.]

November 10, 1958

Mr. L. E. Woods
Raytheon Manufacturing Company
Soldiers Field Road
Brighton, Massachusetts

Dear Mr. Woods:

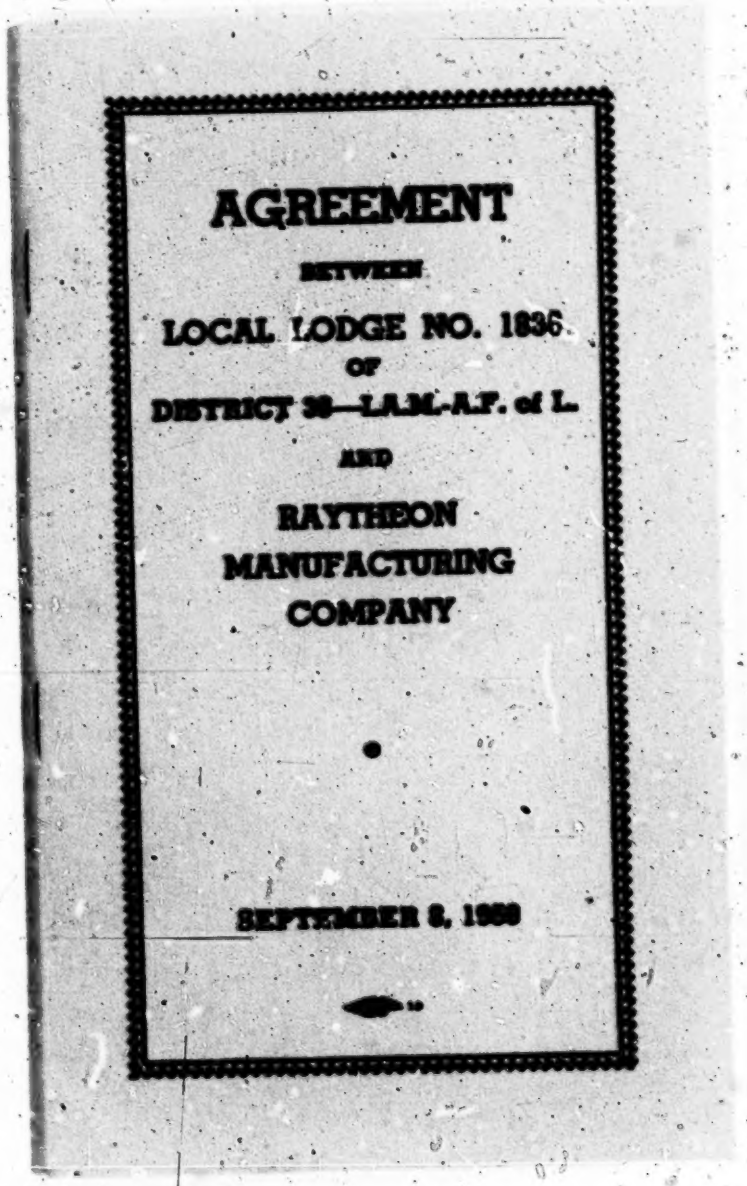
In re our letter to you of November 7th signed by Mr. Ralph Lindquist, we would like to amend said letter to include the following: "violation of Seniority Provisions, Article XIX of the Agreement".

Sincerely,

DAVID P. MCSWEENEY
David P. McSweeney
Business Representative

DPM:LF
CC: Papps
Guerin
Lindquist

[fol. 49] EXHIBIT E TO COMPLAINT



AGREEMENT

BETWEEN

LOCAL LODGE NO. 1836

OF

DISTRICT 38—I.A.M.-A.F. of L.

AND

RAYTHEON

MANUFACTURING

COMPANY

SEPTEMBER 8, 1960

AGREEMENT

BETWEEN

LOCAL LODGE NO. 1836

OF

DISTRICT 38—I.A.M.-A.F. of L.

AND

RAYTHEON

MANUFACTURING

COMPANY

SEPTEMBER 8, 1959

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AGREEMENT

THIS AGREEMENT, entered into this *8th* day of *September, 1959,* by and between RAYTHEON COMPANY, Waltham, Massachusetts, hereinafter referred to as the "Company," and LOCAL LODGE #1836 of DISTRICT 38 of the INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, hereinafter referred to as the "Union,"

WITNESSETH that,

WHEREAS, the National Labor Relations Board, by its Regional Director for the First Region, certified the Union as the representative of the Company's employees classified as Experimental and Development Machinists A, B and C; Machinists A, B and C; Maintenance Machinists; Die Makers A, B and C; Tool Makers A, B and C; Tool Grinders A, B and C, who were employed during the payroll period ending March 16, 1952, excluding all other employees and supervisors as defined in the National Labor Relations Act; and

WHEREAS, pursuant to said Act the parties hereto have engaged in collective bargaining and reached the agreement herein set forth,

NOW THEREFORE, it is hereby agreed by and between the parties as follows:

ARTICLE I

Recognition

1.0 The Company recognizes the Union as the sole and exclusive collective bargaining agent with respect to wages, hours and conditions of employment for all of the Company's employees in the Company's presently existing Massachusetts plants while, during the life of this Agreement, they are classified as Experimental and Development Machinsts A, B and C; Machinists A, B and C; Maintenance Machinists A and B; Die Makers A, B and C; Tool Makers A, B and C; and Tool Grinders A, B and C, in accordance with the job classification descriptions in effect on June 1, 1953, incorporated herein by reference, or as apprentices to such job classifications. The labor grades of such occupational titles are shown in Appendix "A." Such persons are hereinafter referred to as "the employees," and such employees together are referred to as "the unit." All other employees and supervisors as defined in the Act are excluded from this Agreement.

ARTICLE II

Coverage

2.0 The provisions of this Agreement shall be binding upon the Company and its successors and assigns by merger, consolidation or otherwise.

ARTICLE III

Management's Rights

3.0 It is expressly understood and agreed that the rights, powers, functions and authority of management enjoyed at common law shall continue to be vested exclusively in the management of the Company except to the extent limited by statute or by the express and specific provisions hereof.

3.1 It is recognized that from time to time in an effort to define more accurately the work

to be performed by employees classified in accordance with the job classification descriptions incorporated herein by reference and to clarify distinctions between jobs within the unit, the Company may make such changes in the language of the descripticns as are deemed necessary and advisable, subject to the protest of the Union. Changes shall become effective thirty (30) days after notification to the Unicn, if no protest is filed by the Union within such period. Any such protest, limited as above stated, shall be settled in accordance with Section 18.2 hereof.

ARTICLE IV

Union Security

4.0 After thirty (30) days from their date of hire or after thirty (30) days of the effective date of this Agreement, whichever is later, all employees shall be required as a condition of their employment to acquire and thereafter maintain membership in the Union; provided, that this obligation shall not apply (1) tc any employee to whom membership has been denied or whose membership has been terminated by the Union for reasons other than his failure to make tender of, or his failure to make payment of, initiation fees or periodic dues, uniformly required of members as a condition of acquiring and maintaining membership; (2) to any employee to whom membership in the Union is not available upon the same terms and condition generally applicable to other members.

4.1 Nc employee shall be discharged by the Company for failure to comply with Section 4.0 hereof until such employee has received a written notice from the Union, with copy to the Company's Director of Industrial Relations, advising him of his failure tc comply with such Section and until he has had seven (7) days in which to bring himself into com-

pliance. The employee shall be obliged to furnish satisfactory evidence of his compliance therewith to the Company's Director of Industrial Relations. For purposes of this Agreement the term "Director of Industrial Relations" shall be deemed to include any person delegated by such Director to act for him in a partcular instance.

4.2 If the Company shall believe that the discharge of any employee declared by the Union not to be in good standing might violate the rights of such employee under any Federal or State statute, or subject the Company to a charge of discrimination against or violation of the rights of such employee, it shall so notify the Union, in which event it shall not be required to discharge said employee until the matter of the propriety of such discharge shall have been determined pursuant to the grievance procedure.

ARTICLE V

Checkoff

5.0 Upon receipt of a signed authcrization of an employee, the Company shall deduct from the employee's pay checks the initiation fee and dues payable by him to the Union during the period provided for in said authorization, so long as he is employed in the unit.

5.1

(a) Deductions shall be made on account of initiation fees from the first pay check of the employee after receipt of the authorization from which it is practicable to make such deductions, provided that no deduction for initiation fee in excess of $10. shall be made from any one pay check.

(b) Deductions shall be made on account of Union dues from the first pay check of the employee after receipt of the

authorization (or if it is not practicable to make such deductions from such pay check, from the first pay check from which such deductions can practicably be made), and monthly thereafter from the first pay check of the employee in each month.

(c) Deductions shall be made on account of reinstatement fees as follows: three-fifths from the first pay check after receipt of the authorization from which it is practicable to make such deductions and two-fifths from the pay check issued four weeks thereafter.

5.2 The remittance of each deduction provided for in Section 5.1 shall be made to the Financial Secretary of the Union on or about the tenth (10th) day of the month following the deduction. The Company shall furnish the Financial Secretary of the Union, monthly, with a record of those employees for whom deductions have been made and the amount of the deductions.

5.3 The authorizations for initiation fees, monthly dues, and reinstatement fees, respectively, shall be as follows:

(Initiation Fee)

Name.....Clock No.....Dept.....

Please Print

I hereby authorize and direct Raytheon Company to deduct from wages due me on the first payday hereafter the sum of $..... and to pay same properly to Lodge No. 1836 of District 38 of the International Association of Machinists, as my initiation fee.

Signature .....Date.....

(Monthly Dues)

Name.....Clock No.....Dept.....

Please Print

I hereby authorize Raytheon Company to deduct each month from my wages the sum of $..... on account of membership dues in Lodge No. 1836 of District 38 of the International Association of Machinists which is hereby assigned by me to Lodge No. 1836 of District 38 of the International Association of Machinists, and is to be remitted by the Company to the Financial Secretary of the Union.

I submit this authorization and assignment with the understanding that it will be effective so long as I am in the unit represented by said Lodge and irrevocable for a period of one (1) year from this date, or up to the termination date of the current collective bargaining agreement between Raytheon Company and Lodge No. 1836 of District 38 of tthe International Association of Machinists, whichever occurs sooner.

This authorization and assignment shall continue in full force and effect beyond the irrevocable period set forth above until revoked by me by written notice to the Company and the Union, but shall not extend beyond the time I am in said unit.

Signature .....Date.....

(Reinstatement Fees)

Name.....Clock No.....Date.....
(Please Print)

I hereby authorize and direct Raytheon Company to deduct from wages due me on the first payday hereafter the sum of $....., and from the wages due me four (4) weeks thereafter the sum of $....., and to pay the same properly to Lodge No. 1836 of District 38 of the International Association of Machinists, as my reinstatement fee.

Signature .....Date.....

5.4 The Union agrees that it will indemnify and save the Company harmless by reason of any erroneous deduction of such fees and dues

and that it will refund promptly any such dues found to have been erroneously or improperly deducted.

ARTICLE VI

Discrimination

6.0 The Company and the Union agree that, except to the extent permitted by Article IV hereof, neither will interfere with, restrain or coerce employees in the exercise of the rights guaranteed by Section 7 of the National Labor Relations Act and that neither will discriminate, nor cause the other to discriminate, with respect to hire, tenure of employment, or any term or condition of employment against any employee because of membership, or to encourage or discourage membership, in the Union or any other labor organization.

ARTICLE VII

Hours of Work

7.0 For purposes of establishing regular hours of work and employees' rights to overtime pay:

(a) The work shift is normally a period of eight (8) consecutive (excluding unpaid meal periods) hours of work and the day, or first shift, is one normally occurring between 7:00 a.m. and 5:30 p.m.

(b) The normal work schedule shall consist of forty (40) hours composed of five (5) work shifts of eight (8) hours each, Monday through Friday.

(c) The workday shall consist of twenty-four (24) consecutive hours beginning with the commencement of the employee's work shift.

(d) The workweek shall consist of seven (7) consecutive workdays commencing with the beginning on Monday of the employee's work shift.

7.1 In the event the Company regularly schedules hours of work and work shifts not in conformity with the above Section, it will do so only after having notified the Union and after having taken into consideration the convenience of the employees involved and, to the extent circumstances permit, having made an effort to distribute the hours of work so as not to result in unreasonably long or irregular days of work.

7.2 The Company shall have the same right to require employees to report on time and work their regularly scheduled hours in excess of forty (40) hours per week (and not in excess of fifty-two (52)) as it does with respect to all regularly scheduled hours up to forty (40) hours per week.

7.3 Nothing contained in this Article shall be construed as a guarantee of any minimum number of hours of work per day or per week; provided that any change in a work schedule which reduces the hours of work below forty (40) in a workweek shall become effective only after consultation with the Union.

7.4 In the event of a change in a regular work schedule, the Company shall, except in case of an emergency, give notice of such change to the employee effected not less than three (3) workdays prior to the date such change will become effective.

ARTICLE VIII

Overtime

8.0 Time and one-half shall be paid to an employee for:

(a) All time worked in excess of eight (8) hours in any workday.

(b) All time worked in excess of forty (40) hours in any workweek.

(c) All time worked up to eight (8) hours on Saturday for shifts which begin on that day; provided, however, that this Sub-section (c) shall not apply where an employee's scheduled workweek has begun on Wednesday, Thursday, Friday, or Saturday.

(d) All time (up to eight (8) hcurs) worked on the sixth day (the day immediately following an employee's regular five-day work schedule).

(e) Time worked on each day named as a paid holiday in Section 13.0 of this Agreement, except as provided in Sections 8.1(b), 10.2 and 10.3 belcw.

8.1 Double time shall be paid an employee for:

(a) All time worked on Sunday.

(b) All time worked on the seventh day (the day after the day immediately following such employee's regular five-day work schedule).

(c) All hours continuously worked in excess cf twelve (12) hours in any workday.

(d) All time worked by an employee on Saturday or on the sixth day (the day immediately following such employee's regular five-day work schedule) after he has worked eight (8) hours at time and one-half as provided in Subsection 8.0(c) hereof.

8.2 Work perfcrmed on a shift starting on a Saturday or on the sixth day as defined in Section 8.0(d) shall be considered as work performed on a calendar Saturday or on the sixth day. Work performed on a calendar Sunday or on the seventh day as defined in Section 8.1(b) and ccntinuing into the following calendar day shall be considered as work performed on the calendar Sunday or seventh

day (except where a third shift operation is scheduled to begin on Sunday evening or on the seventh day).

8.3 There shall be no duplication or pyramiding of cvertime payments. In any workweek in which the Company is required by law to pay overtime rates, it shall have discharged its obligation for such workweek by paying at the rates provided herein, so long as the minimum requirements of the law are met.

8.4 Employees shall not be required to take time cff to offset overtime worked or to be worked. The Company shall make every reasonable effort to distribute overtime equitably during the contract term among the employees within the department in which the overtime is worked; provided, hcwever, that at the outset of the contract term the records currently maintained of overtime worked or offered shall constitute the starting basis for determining such equitable distribution. If an employee has been given reasonable nctice of a request to work overtime, overtime hours offered and not worked for any reason shall be counted as overtime worked fcr the purpose of this Section 8.4 only. A record of overtime hours accepted or rejected by each employee shall be maintained (on the basis of hours cf pay not hours of work) and shall be made available to the steward assigned to the area. An employee who is transferred or hired into a department during the contract term shall be charged with the average cf the overtime hours which have been offered to employees in the department at that time.

8.5 When, following a work shift of not less than eight (8) hours, an employee at the Company's request works

(a) not mcre than two (2) additional hours (not counting any meal period),

and is required by the Company to take a meal period, he shall be paid at his regular straight-time rate during that meal period but not in excess of thirty (30) minutes, or

(b) more than two (2) additional hours (not counting any meal period), he shall be allowed an unpaid meal period.

ARTICLE IX

Shift Bonus

9.0 Work performed on the second, or evening, shift shall be compensated at the regular straight-time rate of ten per cent (10%) an hour more than the established regular straight-time rate paid for such work on the first, or day, shift. Work performed on the third, or night, shift shall be compensated at the regular straight-time rate of fifteen per cent (15%) an hour more than the established regular straight-time rate paid for such work on the first, or day, shift. Any shift in which more hours of work are regularly scheduled after 3:00 p.m. than prior to 3:00 p.m. shall be considered the second, or evening, shift. Any shift in which more hours are regularly scheduled after 11:00 p.m. than prior to 11:00 p.m. shall be considered the third, or night, shift.

ARTICLE X

Reporting and Call-In Time

10.0 Except in cases of fire, flood, or similar circumstances beyond the Company's control, or except in cases where the Company reasonably believes such an emergency situation is imminent and for that reason cancels one or more work assignments without notice. when an employee reports to work on his regular shift without having been previously notified not to report, he shall be given at least four (4) hours' work within the scope of the job

classification descriptions incorporated herein by reference or if no such work is available, he shall be given four (4) hours' pay at his rate applicable to the hours he would otherwise have worked.

10.1 For purposes of the foregoing Section 10.0, an emplcyee shall be considered to have been requested to report on his regular shift unless an authorized Company representative notifies him to the contrary by personal conversation or telephoned or telegraphed *message delivered to him personally* or to his last known address as shown by Company records (i) on the previous calendar day if he is a first-shift empolee, or (ii) at least three (3) hours before his scheduled starting time the same day if he is a second or third-shift employee.

10.2 Except as provided in Sections 10.3 and 10.4 below, an employee who at the Company's request returns to work before the start of his next scheduled shift in the same workweek shall be paid at the overtime rate applicable thereto as though he had worked continuously from the end of his regular shift, and he shall be guaranteed at least four (4) hours of such work or four (4) hours' pay at such applicable rate; provided, however,

(a) that such overtime rate shall continue in effect during such part of his scheduled shift on the following workday is not included in the guaranteed four-hour period, only (i) if the emplcyee is specifically and personally requested by a Company supervisor to continue working into such shift without a relief period of eight (8) hours, or (ii) if the employee is assigned to a type of work which he knows or reascnably ought to know

he should not leave without express approval of supervision and he is neither relieved by another employee nor excused by supervision and

(b) that this Section 10.2 shall not apply on those occasions when an empclyee's return to work more than two (2) hours before the start of his next scheduled shift is the result of the Company's attempt to distribute overtime opportunities equitably between shifts, or is the result cf a change in the employee's work schedule resulting from layoffs, upgradings, or voluntary transfers, or is the result of telescoping of shifts in a week containing a paid holiday.

10.3 If, after the end of his fifth day work shift (including any overtime portion) cr on the sixth day, an employee is notified to report for previously unscheduled work on the sixth day of the same workweek, he shall be paid for hours worked on the sixth day at the appropriate rate set forth in Article VIII plus an extra one-half times his regular straight-time hourly rate.

10.4 An employee who at the Company's direction reports to work two (2) hours or less before the normal starting time of his scheduled shift shall be paid according to the overtime provisions of Article VIII, provided the direction was communicated to him during his preceding worktime or earlier.

ARTICLE XI

Wages

11.0 The wage rates which shall be effective under this Agreement are set forth in Appendix "A" annexed hereto and made a part hereof. Automatic increases of five cents (5c) per

hour shall become effective at ninety-day intervals cn the nearest Monday, until the maximum of the rate range for the employee's classification has been reached.

11.1 Employees shall be paid the wage rates applicable to the job classification description incorporated herein by reference most nearly corresponding to the work ragularly performed by them. The Company may tempcrarly assign an employee the work of a higher classification for a period not to exceed two (2) consecutive calendar weeks without promoting him. The assignment of an employee to the performance cf work requiring less than the complete range of skills of his classification shall not furnish a basis for a claim on the part of other employees performing the same work to his classifIcation.

11.2 An employee promoted tc an instructor position within the bargaining unit shall receive a premium of five per cent (5%) of his regular straight-time rate of pay, as long as he remains in such position. An employee promoted to a group leader position within the bargaining unit shall receive a premium cf ten per cent (10% of his regular straight-time rate of pay, as long as he remains in such position.

ARTICLE XII

Probationary Period

12.0 When an individual becomes employed within the unit covered by this Agreement, he shall be placed on probation for a period of ninety (90) calendar days. Any period cf continuous absence from work of (2) weeks or more shall not be included in the above ninety-day period. During his probationary period, the only terms of this Agreement applicable to him shall be the provisions relating tc hours of work and rates of pay and the pro-

visions of Article IV and, after thirty (30) days of probationary employment, Article XIII. After such ninety-day period, so long as he shall be employed in the unit, all the terms of this Agreement shall apply to him. This Section shall not apply to employees who return to the unit under the provisions of Subsections (b) and (c) of Section 19.1.

12.1 With respect to a former employee who is rehired within five (5) years after termination of his last previous employment and who has previously completed the probationary period in his previous employment, the probationary period shall be sixty (60) calendar days, except that if an employee is rehired into the same job classification to which he had been assigned at the time of termination of his last previous employment, and if he had completed the probationary period in that job classification during his last previous employment, his probationary period shall be thirty (30) calendar days.

ARTICLE XIII

Holidays

13.0 Except as provided in Article XII and as limited hereinafter in this Article, and in addition to the amount to which he would be entitled for work actually performed, each employee shall receive holiday pay as follows: With respect to the recognized holidays listed below, regardless of the day in the week on which they fall, he shall receive his straight-time rate for the hours not in excess of eight (8) he normally would have worked on his regularly assigned shift had such holidays been full workdays, except that for December 24 he shall be paid for one-half of such hours but not in excess of four (4). The paid holidays shall be eight and one-half (8½) in number of which seven and one-half (7½) shall be:

New Year's Day
April 19th
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
December 24
(half-holiday)
Christmas Day

The eighth paid holiday shall be changeable from year to year at the discretion of the Company.

13.1 If a holiday falls within an employee's vacation period, such employee shall be entitled to holiday pay as well as vacation pay.

13.2 Any holiday recognized above which falls on a Sunday shall be observed on the following Monday.

13.3 If any of the paid holidays named above falls in the period from Monday to Friday inclusive, Saturday work in such workweek shall be paid for as if the holiday had been a regularly scheduled workday and had been worked.

13.4 No employee shall be paid holiday pay for any holiday, if he fails to report and work all of his scheduled hours on his workday immediately preceding and following such holiday, unless his absence or failure to work is caused by his being on vacation or unless he is excused by reason of personal illness, injury incurred in the course of his employment, death in his immediate family, or reason determined to be equivalent thereto by the Director of Industrial Relations. Any such determination by the Director of Industrial Relations shall not be unreasonable and shall be subject to the grievance procedure described in Subsections (a), (b), (c) and (d) of Section 18.1 of this Agreement. In the case of personal sickness or injury, the Company may require a doctor's certificate or examination by the Company physician.

13.5 Employees on leave of absence or excused absence will receive holiday pay only (i) for holidays occurring in the first fourteen (14) calendar days of such absence following their last workday and (ii) if such absence is caused by provable illness or injury. Laid-off employees will not receive holiday pay for holidays occurring during such interruption of their active employment, unless the layoff begins on the day immediately preceding a holiday, in which case they shall be paid for such holiday.

13.6 The Company shall not be required to pay holiday pay to an employee for any holiday on which he has agreed to work if he fails to report for work or having reported, fails without being excused (for reasons as described in Section 13.4 above) to work the agreed upon number of hours.

13.7 For the purpose of this Article, a holiday shall be deemed to commence with respect to any regularly scheduled shift at the regular starting time of such shift after 12:01 a.m. on the holiday and shall end twenty-four (24) hours thereafter.

ARTICLE XIV

Death In Immediate Family

14.0 An employee shall be compensated for time lost from work at his straight-time hourly rate:

(a) Not exceeding three (3) days because of the death of his spouse or any of his children (including foster or step or either of his parents (including forster or step), or his brothers or sisters (including foster or step);

(b) Not exceeding one (1) day's pay because of the death of a member of his immediate family in one of the following relationships by blood or marriage

(including foster or step); Parents of his spouse, brothers-in-law or sisters-in-law, and grandparents.

14.1 The verification of death and relationship shall be made to the satisfaction of the Company.

14.2 Such days shall be considered days worked for the computation of weekly overtime.

14.3 No claim under this Article XIV shall be allowed (i) unless submitted within seven (7) calendar days after the employee's return to work from the absence caused by the death of a member of his immediate family as specified in this Article, and (ii) if the claim is based on the death of a natural relative and the Company has previously honored a claim based on the death of a foster or step relative in the same relationship (iii) if the claim is based on the death of a foster or step relative and the Company has previously honored a death of a natural relative in the same relationship.

14.4 The Standard Personnel Policies and Procedures Chart entitled, "Chart of Relationship—Death in Immediate Family" is attached to this Agreement as an exhibit.

ARTICLE XV

Vacations

15.0 Each employee who is on the active payroll of the Company at the beginning of the vacation shutdown of any year during which this Agreement is effective, and who meets the conditions of this Article, shall be entitled, except as otherwise provided herein, to a vacation with pay for the twelve-month period ending with the beginning of the vacation shutdown (hereinafter called the vacation year as follows:

(a) If he has been on the active payroll of the Company during the vacation year for at least six (6) months prior to the beginning of the vacation shutdown, having been employed by the Company for less than twelve (12) months prior to the beginning of the vacation shutdown, he shall be entitled to a total vacation of three (3) days, with pay equal to twenty (20) times his regular straight-time hourly rate.

(b) If he has been on the active payroll of the Company for at least one (1) year prior to the beginning of the vacation shutdown, and at least six (6) months in the vacation year, he shall be entitled to a total vacation of one (1) week, with pay at his regular straight-time hourly rate for the number of months on the active payroll in the vacation year as follows:

Months Worked	Hours of Vacation Pay
12	40
11	40
10	40
9	36⅔
8	33⅓
7	30
6	26⅔

(c) If he has been on the active payroll of of the Company for a period or periods totalling two (2) years prior to the beginning of the vacation shutdown, without interruptions of more than nine (9) consecutive months by reason of approved leaves of absence or lay-off, and has worked at least six (6) months in the vacation year, he shall be entitled to a total vacation of ten (10) calendar days, with pay at his

regular straight-time hourly rate for the number of months on the active payroll in the vacation year as follows:

Months Worked	Hours of Vacation Pay
12	60
11	60
10	60
9	55
8	50
7	45
6	40

(d) If he has been on the active payroll of the Company for a period of three (3) years prior to the beginning of the vacation shutdown, without interruptions of more than nine (9) consecutive months by reason of approved leaves or layoff, and has worked at least six (6) months in the vacation year, he shall be entitled to a total of two (2) weeks, with pay at his regular straight-time hourly rate for the number of months on the active payroll in the vacation year as follows:

Months Worked	Hours of Vacation Pay
12	80
11	80
10	80
9	73⅓
8	66⅔
7	60
6	53⅓

(e) If he has been continuously on the active payroll of the Company for at least eleven (11) years but less than fifteen (15) years prior to July 1 or the beginning of the vacation shutdown, whichever occurs earlier, and has been on the active payroll of the Company for at least six (6) months in

the vacation year, he shall be entitled to a vacation in accordance with the following Table A, with pay for the number of months on the active payroll in the vacation year as shown in the following Table B:

Table A

Number of Years Seniority	Number of Days Vacation
11	2 weeks plus 1 day
12	2 weeks plus 2 days
13	2 weeks plus 3 days
14	2 weeks plus 4 days

Table B

Number of Years Seniority and Months Worked in Vacation Year		Hours of Vacation Pay
11 years:	12 months worked	88
	11 months worked	88
	10 months worked	88
	9 months worked	80⅔
	8 months worked	73⅓
	7 months worked	66
	6 months worked	58⅔
12 years:	12 months worked	96
	11 months worked	96
	10 months worked	96
	9 months worked	88
	8 months worked	80
	7 months worked	72
	6 months worked	64
13 years:	12 months worked	104
	11 months worked	104
	10 months worked	104
	9 months worked	95⅓
	8 months worked	86⅔
	7 months worked	78
	6 months worked	69⅓
14 years:	12 months worked	112
	11 months worked	112
	10 months worked	112
	9 months worked	102⅔
	8 months worked	93⅓
	7 months worked	84
	6 months worked	74⅔

(f) If he has been continucusly on the active payroll of the Company for at least fifteen (15) years prior to July 1 or the beginning of the vacation shutdown, whichever occurs earlier, and has been on the active payroll of the Company for at least six (6) months in the vacatien year, he shall be entitled to a vacation of three (3) weeks, with pay at his regular straight-time rate for the number of months on the active payroll in the vacation year as shown in the following table; provided however, that with respect to any employee on the active payroll of the Company on July 1, 1955, so long as such employee is continuously on the active payroll of the Company after that date and has been continuously on the active payroll of the Company in the five (5) years immediately preceding July 1 or the beginning of the vacation shutdown, whichever occurs earlier, in any year in which this Agreement is effective, except for approved leaves of absence or layoff, and so long as such employee has worked six (6) months in the vacation year, credit toward the fifteen (15) years of employment required for vacation benefits provided in this Subsection 15.0 (f) shall be given him for all periods of active employment prior to July 1, 1955 despite any breaks in his continuity on the active payroll:

Months Worked	Hours of Vacation Pay
12	120
11	120
10	120
9	110
8	100
7	90
6	80

(g) An employee's vacation pay with respect to a vacation year shall be computed on the basis of his straight-time hourly rate in effect during the last payroll period prior to the beginning of the vacation shutdown.

15.1 An employee who at the beginning of the vacation shutdown is on leave of absence or laid off and who was on the active payroll of the Company at least six (6) months during the vacation year shall receive, in lieu of vacation, as accrued vacation pay, the amount to which he would have been entitled had he been at work on such day. His vacation pay shall be computed at his regular straight-time rate in effect on the day on which his leave of absence or layoff commenced. If he is on military leave of absence, not serving an annual training period, he shall receive such vacation pay at the time such leave of absence begins. Otherwise, he shall be paid such vacation pay upon his return from leave of absence or as a laid-off employee, as soon as practicable after the close of the vacation year. In computing his vacation pay, any month in the vacation year during which he actually worked the scheduled workdays occurring in sixteen (16) consecutive calendar days shall be considered as a full month's work.

15.2 An employee on leave of absence at the beginning of the vacation shutdown on account of an injury incurred in the course of his employment shall be paid the excess of the amount of the vacation pay to which he then would otherwise have been entitled if such accident had not occurred, over the weekly industrial compensation, if any, due him for such vacation period.

15.3 The vacation of each employee shall be taken during the period commencing on

July 1st and ending the following December 15th at the discretion of the Company.

15.4 The Company may, after consultation with the employee and the Union, pay to such employee the amount of vacation pay to which he is entitled without granting him a vacation. The Company shall make such payment in addition to his regular pay for hours worked, prior to December 15 in the year when the employee would otherwise have been entitled to take a vacation.

15.5 All vacations shall be taken, except as otherwise herein provided, on consecutive days, unless the Company and the employee mutually agree on a different division of the vacation time; provided, however, that when an employee is entitled to more than two (2) weeks vacation, the Company may require him to take two (2) weeks at one time and the balance of his vacation at another time or times. If a paid holiday falls in a vacation period, the Company may at its option extend the vacation by one (1) day. If any employee is asked by the Company to return from his vacation prior to its expiration date and does so return, he shall be reimbursed for all necessary out-of-pocket expenses in connection with such recall, and shall, subject to Section 15.4 above, be permitted to take the unexpired portion of his vacation prior to December 15 of the same year (or if the vacation from which he is recalled is being taken in December, prior to December 31 of the same year).

15.6 No employee who quits voluntarily or is discharged for cause shall be entitled to vacation pay; provided however, that an employee who (1) is entitled to vacation pay at the time of the annual vacation shutdown, (2) does not receive his vacation pay at that time, and (3) subsequently quits voluntarily,

or is discharged for an incident or omission occurring after the beginning of the plant shutdown, shall be entitled tc receive the vacation pay to which he was entitled at the time of the beginning of the plant shutdown.

15.7 The rights of vacation pay of a rehired employee shall be measured solely by his service after the date of his latest rehire, except that laid-off employees whose recall rights have expired and who are rehired shall not be deprived of vacaticn benefits to which they would have been entitled in layoff status for the current vacation year.

ARTICLE XVI
Bulletin Boards

16.0 The Company shall place bulletin boards at appropriate locations in the plant on which the Union may post notices. All such notices shall first be shown to the Directcr of Labor Industrial Relations for his approval and shall be signed by the Union.

ARTICLE XVII
Shop Committee

17.0 The Company recognizes and will deal with the accerdited members of the Shop Committee and Stewards in all matters relating to grievances.

17.1 The Union shall furnish the Company with a list of the names of the appropriate Business Representative of the Union, the members of the Shop Committee (nct to exceed six (6).) the Chief Steward, the Assistant Chief Steward, the Alternate Chief Steward and the Stewards. The Union shall designate the area assigned to each Steward (which areas shall not overlap). The Union shall notify the Company of any change in such list.

17.2 Stewards may leave their work during working hours for reasonable periods of time without loss of pay solely for the investigation and handling of grievances arising within their assigned areas. Stewards may conduct such activities at any time within their regularly scheduled working hours, and also within their assigned area for one (1) hour before and one (1) hour after such working hours, but they shall not be paid by the Company with respect to any time spent on such grievances outside of their regularly scheduled working hours. They shall receive permission of the supervisor of their section before leaving their place of work and shall notify him upon their return. They shall immediately upon entering an area notify the supervisor of that area of the name of the person who they desire to see or the operation which they wish to view.

17.3 The Chief Steward and the Assistant Chief Steward may conduct their activities with respect to grievances at such times as may be reasonable under the circumstances, but they shall not be paid by the Company for time devoted to such activities outside of their regularly assigned shifts. In all other respects, they shall be guided by the rules of conduct applicable to Stewards as set forth in Section 17.2 hereof. The Alternate Chief Steward may substitute for the Chief Steward or the Assistant Chief Steward only when either is absent from work.

17.4 The powers and authority of Shop Committeemen and Stewards shall be confined to those set forth in this Article XVII and in Article XVIII.

ARTICLE XVIII

Adjustment of Grievances

18.0 For the purposes of this Agreement, the term "grievance" means any dispute be-

tween the Company and the Union, or between the Company and any employee, concerning the interpretation of this Agreement in its application to any particular situation or as to whether it has been observed or performed.

18.1 Any grievance as above defined between the Company and an employee shall be settled, subject to the rights of the individual granted by law, in accordance with the following procedure:

(a) The grievance shall be promptly submitted by the employee (with or without his Steward) to the foreman of the department involved. If no satisfactory settlement is reached within two (2) workdays after such submission, then:

(b) The aggrieved and the Steward shall within the next two (2) workdays reduce the grievance to writing and, after it has been signed by the aggrieved, shall submit it to and discuss it with the general foreman or department head or Company official of the equivalent level and the appropriate Personnel representative. If no satisfactory settlement is reached within the next following two (2) workdays, then:

(c) The Chief Steward and the Steward shall, within the next three (3) workdays meet and discuss the grievance with a member of line management of the level of Plant Manager, or his delegate, and a representative of the Division's Personnel Office. If no satisfactory settlement is reached within the next two (2 workdays following such discussion, then:

(d) At a mutually convenient time or times the Shop Committee and a representative of the Union shall meet and dis-

cuss the grievance with designated representatives of the Company, which meeting or meetings shall take place not later than ten (10) days from the date of completion of Step (c).

(e) In the event the grievance is not settled in a satisfactory manner at the last meeting mutually agreed upon under Step (d), then the aggrieved party may within ten (10) days thereafter submit such grievance to arbitration in the manner hereinafter provided.

(f) The times for taking action stated above may be extended by mutual consent.

(g) Notwithstanding the foregoing, any such grievance challenging an employee's discharge or suspension for cause shall be presented in writing directly to the Company's Director of Industrial Relations or his delegate. No such grievance shall be considered unless submitted as above within three (3) working days from the date of such discharge or suspension. If both discharge and suspension are found to be improper and the employee reinstated, he shall be paid retroactively to the date of such disciplinary action. The grievance of a discharged or suspended employee must be signed by the employee affected and unless such employee attends the meeting at which time the grievance is discussed, as a witness, or unless upon request he is excused by the Director of Industrial Relations which request shall not be unreasonably denied, the discharge or suspension shall be absolute and final.

18.2 Any grievance between the Company and the Union which does not involve a griev-

ance of an individual employee shall be settled in accordance with the following procedure:

(a) In the event the Union is the aggrieved party, it shall submit its grievance in writing to the Company's Director of Industrial Relations, and in the event the Company is the aggrieved party, it shall submit its grievance in writing to the Chief Steward of the Union. Within five (5) days of receipt of such grievance, at such time as shall be mutually agreeable, the Chief Steward and the Director of Industrial Relations, or their delegates, shall meet and discuss the grievance. If the same has not been satisfactorily settled within ten (10) days of its submission, then:

(b) A meeting or meetings shall be held between designated representatives of the Company and designated representatives of the Union for the purpose of discussing the grievance. If the same is not settled as a result of such meeting or meetings, then the aggrieved party may, within ten (10) days of the last such meeting mutually agreed upon, submit such grievance to arbitration in the manner hereinafter provided.

18.3 The party submitting the grievance to arbitration shall, within the period stated above for such submission, notify the other party in writing of its intention to arbitrate.

18.4 The arbitration board shall be selected according to, and shall be governed by, the following procedure:

(a) The Union and the Company, within seven (7) days of the mailing of the above-described notice of intention, shall each designate one arbitrator, and the two so designated shall within

ten (10) days after their designation select a third who shall act as chairman. If the two designated arbitrators shall, within the above-alloted time, fail to agree upon a third, they shall request a panel of names from the American Arbitration Association, and select an arbitrator from such panel. Should they fail to agree upon any name on the panel within ten (10) days after the panel is furnished to them, then the third arbitrator shall be named by the American Arbitration Association upon the request of either party.

(b) The arbitrators shall consider the matter submitted for arbitration upon the basis of the submission agreed to by the parties, give a hearing to the persons immediately concerned and to representatives of the parties, and decide the grievance by majority vote on the basis of the evidence presented. Their decision shall be final and binding upon both parties and any employees involved. In the event the parties are unable to agree upon a submismission, the arbitrators shall hear evidence and arguments from both parties on the question of the submission before proceeding with the hearing on the merits of the matter.

(c) Each party shall bear the expenses of preparing and presenting its own case and the costs of its own arbitrator. The costs, if any, of the neutral arbitrator and incidental expenses mutually agreed to in advance shall be shared equally between the two parties.

(d) Such arbitrators shall have no authority to alter or modify this Agree-

ment or any of its provisions or to prevent the Company and the Union from settling by mutual agreement, prior to final decision, any grievance submitted to arbitration hereunder.

(e) Awards or settlements of grievances by arbitration may or may not be retroactive as the equities of each case shall demand, in the judgment of the majority of the arbitrators making the award, but in no event shall any award be retroactive to a date prior to the date on which the grievance was first presented in written form as provided in Section 18.1 or 18.2 of this Article, except as provided in Section 18.1 (g).

18.5 Either party may propose that a single arbitrator hear and decide a particular grievance submitted to arbitration hereunder. If such proposal is mutually acceptable, the Company's Director of Industrial Relations and the Union's Business Representative shall agree upon an arbitrator, and failing agreement, shall proceed in his selection in the manner described for selection of a neutral arbitrator in Subsection 18.4 (a) hereof. Such arbitrator shall have the same authority as is conferred on an arbitration board in Section 18.4 hereof.

18.6 If a party presenting a grievance shall fail to proceed therewith within the time or times hereinabove set forth or within such time or times as extended by mutual consent, he shall be conclusively presumed to have abandoned such grievance. If a party fails to receive an answer to his grievance within the time specified, or as extended, he may consider the grievance as having been denied at that step and he may proceed with it to the next step of the grievance procedure.

ARTICLE XIX

Seniority

19.0 The principles of seniority as hereinafter set forth shall be observed within the unit.

19.1 (a) Seniority for present employees shall be determined from the date appearing opposite each employee's name on the "I.A.M. Seniority List" incorporated herein by reference. The Company will keep such a list up to date and will give the Union opportunity to examine it upon request. The seniority of an employee newly hired, rehired, or newly transferred after June 1, 1959 into this bargaining unit, shall be based on his date of hire, his latest date of rehire, or his date of transfer respectively.

(b) A person once in the unit and transferred on or prior to June 1, 1959 out of the unit to another position with the Company and later transferred into the unit shall have all of his employment with the Company, both inside and outside the unit up to and including June 1, 1959, counted in determining his seniority under this Agreement, but he shall be laid off if necessary to permit the recall of any employee with greater seniority who was laid off while such person was employed outside the unit.

(c) A person once in the unit and transferred after June 1, 1959 out of the unit to another position with the Company and later transferred into this unit shall have counted only that amount of seniority which he had on the date of his transfer out of the unit in determining his seniority (except as seniority applies to holiday and

vacation benefits under this Agreement) but he shall be laid off if necessary to permit the recall of an employee with greater seniority who was laid off while such person was employed outside the unit.

(d) Service at any time with the Company after June 1, 1959 in any bargaining unit other than that covered by this Agreement shall be counted in determining an employee's seniority under this Agreement only as seniority applies to vacation and holiday benefits and for no other purpose.

19.2 Notwithstanding other provisions of this Agreement, each Union officer, Chief Steward, Assistant Chief Steward, Alternate Chief Steward, and Steward shall, for purposes of layoff, during his tenure of office be considered the most senior employee in his occupational title, and if there is no work available under his occupational title, shall be assigned other work which in the opinion of the Company he is capable of performing and which in the opinion of the Company corresponds most closely with the work of his ocupational title, and he shall be reclassified into the occupational title covering the work to which so assigned; provided that with respect to any Steward this paragraph shall apply only to the area and the shift or shifts on which he is assigned for the handling of grievances and as long as there are five (5) employees working in his assigned area. Upon relinquishing of his Union office, each such person shall revert to the position on the seniority list to which his seniority entitles him, and shall be laid off if necessary to permit the recall of an employee with greater seniority who was laid off while such person held office.

19.3 In the event of a layoff, that is, a reduction in the number of employees in a given

occupational title on a shift in a department, due to a lack of work in such occupational title, such reduction shall be effected as follows:

As used in this Section, the words "location" and "area" are defined to mean the presently existing Raytheon plants which make up the following eight locations and three areas:

(i) Area I—All of the present existing Raytheon plants in the following four Massachusetts locations:

(a) Power Tube—Waltham
Spencer Laboratory, Burlington
Lexington Street, Waltham

(b) Government Equipment Plants #1 and #2 — Waltham
Transformer Plant, Waltham
Bleachery Building, Watlham

(c) Wayland Laboratory
Sudbury Laboratory
Maynard Laboratory
Charles River Annex, Waltham

(d) Bemis Plant, Newton
Chapel Street, Newton
California Street, Newton
Galen Street, Watertown
Mack Building, Brighton

(ii) Area II — All the presently existing Raytheon plants in the following three Massachusetts locations:
(a) Andover Plant
(b) Lowell Plant
(c) Bedford Laboratory
Winter Street Laboratory, Waltham

(iii) Area III — All of the presently existing Raytheon plants in Quincy, Massachusetts

The most senior employee affected by the reduction in the department shall be the first to exercise his rights of displacement, if any, by meeting in the order hereinafter set forth, the first of the following mutually exclusive provisions to apply:

(a) He will displace the most junior employee in the same occupational title regardless of shift in the same department as his own, or, if none

(b) He will displace the most junior employee in the same occupational title on the same shift and in the same location as his own or, if none

(c) He will displace the most junior employee in the same occupational title and in the same location as his own, or, if none

(d) He will displace the most junior employee in the same occupational title on the same shift and in the same area as his own, or if none,

(e) He will displace the most junior employee in the same occupational title and in the same area as his own regardless of shift, or if none

(f) He will displace the most junior employee in the same labor grade and in the same area, subject to the provisions appearing in numbered subparagraphs (1), (2), and (3) below in this Subsection 19.3, or, if none,

(g) He will replace the most junior employee in the same occupational title as his own, regardless of shift, location, and area, or, if none,

(h) He will displace the employee most junior to him in the same labor grade as his own regardless of shift, location, and area, subject to the provisions appearing in numbered subparagraphs (1), (2), and (3) below in this Subsection 19.3, or, if none,

(i) He will displace the employee most junior to him in the lower-paid labor grade nearest his own regardless of shift, location, and area, subject to the provisions appearing in numbered subparagraphs (1), (2), and (3) below in this Subsection 19.3.

(1) An employee must have had recorded provable satisfactory experience with the Company, according to Company standards, in the work of a Tool Maker, Die Maker or Maintenance Machinist occupational title before he will be permitted to displace an employee in any such occupational title.

(2) An employee in a Tool Grinder occupational title must have had recorded provable satisfactory experience with the Company, according to Company standards, in the work of an occupational title other than Tool Grinder before he will be permitted to displace an employee in such other occupational title

(3) Determination of an employee's provable satisfactory experience in occupational titles other than his own, solely for the purpose of establishing displacement rights under this Section 19.3, may be made by the Company at any time, in accordance with Company standards. Such determination shall be subject to grievance under Article XVIII, provided that any such grievance must be submitted within seven (7) calendar days following written notice of the determination to the employee and the Union.

(j) An employee will not be recalled to fill an opening in his occupational title on a shift or at a location which he declined at time of separation, except to the shift and department from which he was initially displaced, unless he notifies the Perscnnel Department by registered letter that he desires to be considered for such opening.

(k) At the time of layoff, an employee shall specify those locations for which he is available for recall purposes, and he shall be offered recall only to the specified locaticns unless he notifies the Personnel Department by registered letter of his availablity for work at other locations.

(l) Instead of exercising his displacement rights as above, an employee may accept separation from active employment with recall rights as provided below in Section 19.6.

Each employee exercising his displacement rights must have the ability to perform the work of the occupational title of the employee displaced in accordance with Company standards and failure to demonstrate such ability, within a reasonable period, in the discretion of the Company, shall constitute just cause for discharge.

19.4 Furloughs (temporary layoffs) of not more than two (2) calendar weeks shall not be subject to the provisions of this Article, but such furloughs, to the extent practicable, shall be divided equitably among the employees concerned.

Each layoff arising out of a cancellation of a Government contract or a cancellation of a subcontract or purchase order under a Government contract may, for one (1) week, be considered a temporary layoff, during which

time the Company and the Union shall consult as to the application of this Article.

19.5 When an employee is requested to return to a job in the occupational title from which he was laid off under this Article, he shall be notified of the fact by telegram or registered mail letter sent to his last known address. If the employee informs the Company, in writing, within three (3) days of the sending of the notice above of his intention to accept the job tendered, the job shall be held open until he can report for duty, but no longer than one (1) week from the date of his reply. If no reply is received by the Company within three (3) days of the sending of the notice, then the Company may proceed to fill the vacancy thereby created.

19.6 In the event of an increase in the number of employees in a particular occupational title within the unit, employees, laid off from jobs designated by such occupational title except those who remained in the same labor grade as prior to the layoff, shall be given an opportunity to return thereto in the inverse order in which the layoff occurred (that is, "last out, first in"), provided, however, that with respect to an employee who displaced another employee in a lower-paid labor grade at the time of layoff, the Company may at the time he is scheduled for recall elect to retain him in his current work assignment, paying him the rate to which he would be entitled in the occupational title from which he was laid off.

19.7 It is the policy of the Company to fill such vacancies as remain after operation of the preceding Section by upgrading of persons presently employed, but the Company reserves the right (which right shall not be unreasonably exercised) in any given case not to apply the policy. Where such vacan-

cies are filled by upgrading of persons presently employed, employees in the department in the next lower-paid labor grade in the same occupational grouping in which the vacancy occurs possessing the ability, in accordance with the Company standards, to perform the work of the occupational title in which the vacancy occurred shall be offered the opportunity to fill such vacancies in the order of seniority.

19.8 Employees who entered the Armed Forces shall continue to accumulate seniority in accordance with the applicable State or Federal laws, and shall upon release be entitled to reinstatement in the unit to the extent provided by such laws.

19.9. Unless he is on leave of absence for Union business, an employee

(a) shall cease to have any right based on seniority and his name shall be stricken from the seniority list if:
  (i) he quits his employment, or
  (ii) he is discharged for cause;

(b) shall cease to have any rights based on seniority, his name shall be stricken from the seniority list, and he shall be terminated if:
  (i) with seniority of more than his probationary period but less than one (1) year, he is laid off for a period equivalent to his length of service, or
  (ii) with seniority of one (1) year but less than two (2) years, he is laid off for a period of more than one (1) year, or
  (iii) with seniority of two (2) years but less than four (4) years, he is laid off for a period of more than eighteen (18) months, or

(iv) with seniority of four (4) years or more, he is laid off for a period of more than twc (2) years.

(c) the employee is on leave of absence for more than nine (9) months, unless extended by mutual agreement, or

(d) upon being notified by the Company by telephone or by telegram sent to his last known address on the records cf the Company to return to work, he fails either to report for work within three (3) workdays or to give the Company satisfactory reason fcr not reporting, or

(e) he is absent without proper cause on all the days he was regularly scheduled to work during seven (7) consecutive calendar days beginning with the first day of such absence, or

(f) he fails to return upon expiration of leave of absence.

Fcr all purposes under this Article, an employee, whose seniority has been interrupted as above and who is rehired, shall be regarded as a new employee.

ARTICLE XX

Strike and Lockout

20.0 The Union shall not call, sanction or permit any strike, slowdown, or concerted work stcppage within the unit during the term of this Agreement except for (1) the Company's failure to abide by the arbitration provisions of this Agreement, or (2) the Company's failure or refusal to comply with any decision of any board cf arbitration establishes hereunder.

20.1 Should a strike, slowdown or concerted stoppage of work by employees other than those permitted by Section 20.0 hereof cccur

during the term of this Agreement, the Union, within forty-eight (48) hours after receipt of written notice from the Company, shall be obliged to do the following things only:

(a) the Union shall immediately declare publicly that such action is unauthorized;

(b) the Union shall promptly order its members to cease such action, and shall subject all such members in violation hereof to disciplinary measures, the Union to be the judge of the disciplinary measures appropriate;

(c) the Union shall not question the right of the Company to discipline or discharge employees for engaging in, participating in, or encouraging such unauthorized action, and shall agree that such discipline and discharge shall not be considered a violation of this Agreement by the Company; provided that an issue of fact as to whether or not any particular employee has engaged in, participated in, or encouraged any such unauthorized action, if disputed, shall be resolved pursuant to the grievance procedure.

20.2 The obligation of the Union shall be limited to the performance of the acts required by Section 20.1, and upon compliance by the Union with the provisions of said Section, the Union and its officers, agents and members shall have no further liability during the term of this contract or thereafter, for any damage suffered by the Company arising from or out of such stoppage or strike.

20.3 The Company shall not lock out any or all of its employees during the term of this Agreement except for: (1) the Union's failure or refusal to abide by the arbitration pro-

visions of this Agreement; or (2) the Union's failure or refusal to comply with the decision of any board of arbitration established hereunder.

ARTICLE XXI
Wash-Up Time

21.0 The practice currently in effect in the various divisions of the Company with respect to wash-up shall be preserved during the term of this Agreement.

ARTICLE XXII
Picket Lines

22.0 The Company will not require the employees to cross any picket line established on or in front of the premises in a labor dispute between the Company and any of its employees not covered by this Agreement. The individual or concerted refusal to pass such picket line shall not constitute grounds for discipline, nor shall a concerted refusal to pass such a picket line constitute a stoppage or strike within the meaning of this Agreement.

ARTICLE XXIII
Apprentices

23.0 The Standards of Apprenticeship dated November 10, 1955 are hereby incorporated into this Agreement and made part hereof; however, the said Standards and this Agreement shall be regarded as mutually exclusive except as specifically provided in Section 14.3 of the Standards.

23.1 Apprentices who complete their apprenticeship and are transferred to a journeyman classification shall, at the time of such transfer, be given full credit for their service within the Unit.

ARTICLE XXIV

Plant Visits

24.0 The business of the International Representative and the Business Representative of the Union, if any, is with the Company's Director of Industrial Relations, but they shall be permitted, subject to governmental security regulations, to enter the plant, when necessary, upon application to the Company's Director of Industrial Relations.

ARTICLE XXV

Jury Duty — National Guard

25.0 Employees absent from work on account of jury duty or on account of annual two weeks' training duty with the National Guard, Military Reserve or Naval Reserve shall be paid for time actually lost during such service to the extent of the excess of the earnings they would have received from the Company except for such service (based on their regularly scheduled workday and week, but not in excess of forty (40) hours in any week or eight (8) hours in any day) over their compensation for such service. Satisfactory proof of such compensation shall be required from the employee.

ARTICLE XXVI

Safety

26.0 The Company has endeavored to equip its plants and plan its operations so that employees will not be subject to unreasonable risks of accidents or injuries. The Union will foster safety consciousness among the employees and will cooperate with the Company to the end that maximum safety will be achieved. The Chief Steward and Stewards of the Union (in their respective locations) are authorized to bring to the attention of

Safety Supervisors conditions which present unreasonable hazards to the safety of employees.

ARTICLE XXVII

Excused Absences

27.0. Excused absence may not be granted for more than two (2) weeks. In the event the original request for an excused absence covers a period of less than two (2) weeks and the emplcyee subsequently finds that further excused leave is required, another request should be made. An absence extending beyond two (2) weeks is excusable only on the basis of a leave of absence, which must be approved by the Company.

ARTICLE XXVIII

Duration and Effect

28.0 This Agreement shall be effective as of the first date stated in this Agreement, except with respect to Appendix "A" hereof, which shall be effective as of June 1, 1959, but only with respect to thcse employees who are either on the active payroll of the Company on the date of this Agreement or who were laid off after June 1, 1959, and whose recall rights had not expired as of the first date stated in this Agreement. Either party, by giving not less than sixty (60) days written notice to the cther party, may reopen this Agreement on or after May 31, 1961, for the purpose of negotiating hourly wage rates and/or economic fringe benefits. This Agreement shall remain in effect, as the same may be hereafter amended or modified by agreement of the parties with respect to changes in wage rates and/or eccnomic fringe benefits at the said time of reopening or with respect to other matters by Letter of Mutual Intent, until midnight of May 31, 1962, and shall be automatically renewed thereafter from year to year unless notice of termination

or a desire to modify or change this Agreement is given in writing by either party at least sixty (60) days before the expiration date. Within (10) days of receipt of such notice, a conference shall be arranged for the purpose of negotiating new contract terms or conditions.

28.1 If either party reopens this Agreement on or after May 31, 1961, under Section 28.0 above for the purpose of negotiating hourly wage rates and/or economic fringe benefits, the provisions of Article XX shall not prevent either party from exercising only for such economic purposes, as of a date forty (40) days after the mailing on or after June 1, 1961, by registered mail from one party to the other party of an appropriate notice in writing, those legal rights which would otherwise be precluded by said Article.

28.2 If a notice of a desire to modify or change this Agreement is given in accordance with the above Section 28.0 and negotiations should continue beyond May 31, 1962, any amendment subsequently agreed upon in such negotiations shall be retroactively effective to May 31, 1962. If agreement on proposed amendments has not been reached by May 31, 1962 and neither party has given a notice of termination as provided in the above Section, either party may terminate this Agreement, as of a date forty (40) days after the mailing by registered mail to the other party of a notice in writing of such intention to terminate it.

28.3 For the period during which it is effective in accordance with the above Sections, this Agreement amends and supersedes and entirely replaces all previous agreements and understandings respecting wages, hours, and working conditions of employees in the unit

as above defined. Except as is otherwise provided in Section 28.4 hereof, it constitutes the entire agreement and understanding between the Company and the Union on all matters which are properly the subject matter of collective bargaining.

28.4 Either party may at any time propose specific amendments to this Agreement and the parties may mutually agree on amendments and the effective date thereof, provided that neither party shall be obliged to consider such proposed amendments except as provided in Section 28.0 above. Amendments, modifications and additions to this Agreement shal be evidenced by Letters of Mutual Intent which shall be signed by representatives of the parties duly authorized to do so. The waiver of any breach or condition of this Agreement by either party shall not constitute a precedent in the future enforcement of all the terms and conditions herein, and neither party shall be bound by any informal understanding, agreement or practice supplementing this Agreement which has not been set forth in a Letter of Mutual Intent, nor shall the arbitration procedure, provided in Article XVIII of this Agreement, be available for the resolution of any dispute respecting the rights of the parties growing out of any such informal understanding, agreement or practice.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered on this 8th day of September, 1959, by their proper officers thereunto duly authorized.

FOR RAYTHEON COMPANY

/S/ P. L. SPENCER
P. L. Spencer, Senior Vice President

/S/ L. E. WOODS
L. E. Woods, Director of Industrial Relations

/S/ R. G. HENNEMUTH
Witness

/S/ H. W. MCCARTHY
Witness

/S/ F. B. COLLIS
Witness

/S/ THOMAS J. LEGORE
Witness

FOR LOCAL UNION 1826 OF DISTRICT 38 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO

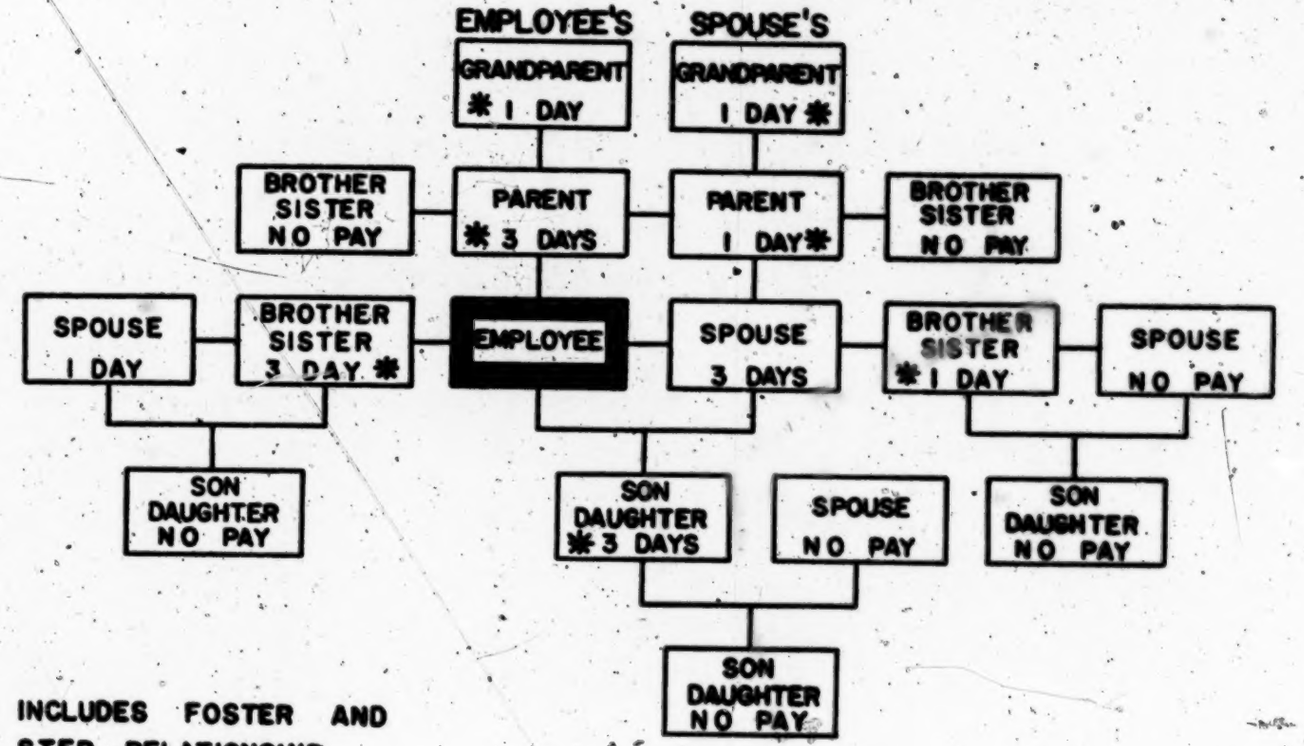
/S/ DAVID P. MCSWEENEY
David P. McSweeney,
Business Representative, District 38

/S/ FRANK EVERY
Frank Every
Business Representative, District 38

MEMBERS OF THE NEGOTIATING COMMITTEE

/S/ W. H. GUERIN
/S/ JAMES E. TORRES
/S/ RALPH I. LINDQUIST
/S/ JOHN TROY
/S/ GEORGE H. KITTRELL
/S/ THOMAS E. JOYCE
/S/ LESLIE E. THOMPSON
/S/ DAVID MAYHEW
/S/ JOSEPH A. MARCOUX

CHART OF RELATIONSHIP — DEATH IN IMMEDIATE FAMILY



* INCLUDES FOSTER AND STEP RELATIONSHIP

APPENDIX "A"

Schedule of Wage Rates by Labor Grades

Effective Dates:
June 1, 1959 through August 23, 1959

Labor Gr.	*Min.*	*Step 1*	*Step 2*	*Step 3*	*Max.*
1	$2.72	$2.77	$2.82	$2.87	$2.92
2	2.58	2.63	2.68	2.73	2.78
3	2.43	2.48	2.53	2.58	2.63
4	2.34	2.39	2.44	2.49	2.54
5	2.18	2.23	2.28	2.33	2.38
6	2.00	2.05	2.10	2.15	2.20

The Intervals between progression steps shall be ninety (90) days and the increases shall become effective on the Monday nearest the ninetieth (90th) day until the maximum is reached.

Labor Grade 1—Tool Maker A
Die Maker A
Experimental and Development Machinist A

Labor Grade 2—Tool Maker B
Die Maker B
Experimental and Development Machinist B
Tool Grinder A
Maintenance Machinist A

Labor Grade 3—Tool Maker C
Die Maker C
Experimental and Development Machinist C

Labor Grade 4—Machinist A
Maintenance Machinist B
Tool Grinder B

Labor Grade 5—Machinist B
Tool Grinder C

Labor Grade 6—Machinist C

APPENDIX "A"

Schedule of Wage Rates by Labor Grades

Effective Dates:
August 24, 1959 through May 31, 1960

Labor Gr.	Min.	Step 1	Step 2	Step 3	Max.
1	$2.75	$2.80	$2.85	$2.90	$2.95
2	2.61	2.66	2.71	2.76	2.81
3	2.46	2.51	2.56	2.61	2.66
4	2.37	2.42	2.47	2.52	2.57
5	2.21	2.26	2.31	2.36	2.41
6	2.03	2.08	2.13	2.18	2,23

Effective Dates:
June 1, 1960 through May 31, 1961

Labor Gr.	Min.	Step 1	Step 2	Step 3	Max.
1	$2.89	$2.94	$2.99	$3.04	$3.09
2	2.74	2.79	2.84	2.89	2.94
3	2.58	2.63	2.68	2.73	2.78
4	2.48	2.53	2.58	2.63	2.68
5	2.31	2.36	2.41	2.46	2.51
6	2.15	2.20	2.25	2.30	2.35

[fol. 50]

EXHIBIT F TO COMPLAINT

[Letterhead of International Association of Machinists, Washington, D.C.]

May 13, 1960

Robert G. Hennemuth, Esq.
Assistant Director of Industrial Relations
Raytheon Manufacturing Company
Waltham 54, Massachusetts

Dear Mr. Hennemuth:

In my letter of April 2, 1959 I had agreed—as you and Mr. Woods requested—to postpone without waiving any rights under the agreement, the processing of the grievance dated November 7, 1958, as amended on November 10, 1958, and incorporated by reference by my letter of April 2, 1959. In accordance with my agreement then, this will serve as formal notice that the grievance is revived; and, that it now appears that no useful purpose will be served by any additional discussions of our respectively appointed committees in connection with the resolution of this grievance and its problems. Furthermore, the likelihood of resolution of this grievance by any future meetings or discussions is doubtful.

Under the circumstances, I see no answer to this grievance except by final and binding arbitration, as provided in the terms of the agreement, and a determination of the rights of the parties by an impartial neutral. Accordingly, please consider this your notice of revival of my letter of April 2, 1959, as well as notice under Section 18.3, and as indicated in my letter of February 4, 1959 of our intention to arbitrate, as well as notice, *as previously stated*, under

[fol. 51] Section 18.4 of the agreement of our designation of Mr. David P. McSweeney as the Union's arbitrator.

Very truly yours,

Plato E. Papps
Plato E. Papps
Chief Counsel

cc:Coonley
McSweeney
William I. Guerin
Ralph I. Lindquist
James Torres
PP/lg

In United States District Court

Answer—Filed April 25, 1961

Defendant, Raytheon Company (formerly Raytheon Manufacturing Company), for its answer to the complaint:

1. Denies that this Court has jurisdiction over the matter in controversy and says that the matter is within the exclusive jurisdiction of the National Labor Relations Board.

2. Says that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2 of the complaint.

3. Admits that it is a corporation organized and existing under the laws of the State of Delaware but says that its principal place of business is in the Town of Lexington, Commonwealth of Massachusetts, and that its correct name is Raytheon Company.

4. Admits that it is engaged in "commerce" as that term is defined in the Labor-Management Relations Act of 1947. [fol. 52] Denies each and every other allegation of paragraph 4 of the complaint.

5. Admits the allegations of paragraph 5 of the complaint.

6. Admits the allegations of paragraph 6 of the complaint.

7. Admits that it has received from Plaintiff a letter dated November 7, 1958, and that "Exhibit B" annexed to the complaint is a copy thereof. Admits that it has received from Plaintiff a letter dated November 10, 1958 and that "Exhibit D" annexed to the complaint is a copy thereof. Admits that the Job Classification Descriptions cumulatively called "Exhibit C" and annexed to the complaint generally describe certain jobs performed by some employees of Defendant. Denies each and every other allegation of paragraph 7 of the complaint.

8. Admits that it has from time to time discussed with Plaintiff the performance of the work referred to in paragraphs (a), (b), (c), and (d) of paragraph 8 of the complaint. Denies each and every other allegation of paragraph 8 of the complaint.

9. Admits that Plaintiff has requested it to agree to submit to arbitration issues as to whether certain work should be performed by employees represented by Plaintiff or by employees represented by another union. Admits that it agreed that Plaintiff's request would not be rendered untimely by the passage of time spent in discussions of the matter. Admits that one such request was set forth in a letter received from Plaintiff dated February 4, 1959. Denies each and every other allegation of paragraph 9 of the complaint.

10. Admits that Plaintiff and it entered into a collective bargaining agreement to be effective from September 8, 1959 to May 31, 1962, which agreement is automatically [fol. 53] renewed thereafter from year to year unless notice of termination or a desire to modify or change the agreement is given by either party as provided in Article XXVIII, Section 28.0 of said agreement. Admits that "Exhibit E" annexed to the complaint is a copy of said agreement. Denies each and every other allegation of paragraph 10 of the complaint.

11. Admits that discussions of the matter between it and Plaintiff failed to resolve same. Admits that Plain-

tiff notified it by letter dated May 13, 1960 of Plaintiff's desire to submit the matter to arbitration. Admits that "Exhibit F" annexed to the complaint is a copy of said letter. Denies each and every other allegation of paragraph 11 of the complaint.

12. Admits that it by letter dated May 26, 1960, declined to submit the matter to arbitration on the ground that the grievance is not arbitrable under the terms of the applicable collective bargaining agreement. A copy of said letter of May 26, 1960, is annexed hereto and marked "Exhibit 1." Denies each and every other allegation of paragraph 12 of the complaint.

13. Denies each and every allegation of paragraph 13 of the complaint.

14. As a first affirmative defense Defendant says that an order compelling defendant to submit to arbitration the alleged grievance described in the complaint would be inconsistent with fundamental principles of equity. The alleged grievance arises out of conflicting claims from rival labor unions, of which Plaintiff is one. Submission of the issue to arbitration will, should Plaintiff be successful at arbitration, fail to resolve the conflict as to the other union, the arbitration award not being binding upon such other union. Thus an order compelling arbitration will involve defendant in a circuity of action and potentially a multiplicity of suits.

[fol. 54] 15. As a second affirmative defense Defendant says that any order to arbitrate would compromise the rights of Local 1505, International Brotherhood of Electrical Workers, City of Waltham, Commonwealth of Massachusetts. Local 1505, IBEW, which represents a unit consisting of Defendant's production and maintenance employees, has made claims directly in conflict with those of Plaintiff to the effect that employees represented by it rather than employees represented by Plaintiff should perform the work in question. Therefore, any order to arbitrate would put in litigation the rights of Local 1505, IBEW, in a private forum in which it would have no right to be heard. An order which would thus restrain the rights

of a party where such party could not be heard would defeat the basic purpose of equity to do justice.

Wherefore Defendant prays that the complaint herein be dismissed and that Defendant have such other and further relief as to the Court seems just and proper.

By its Attorneys, Paul F. Hannah, Charles H. Resnick.

IN UNITED STATES DISTRICT COURT.

PETITION FOR LEAVE TO INTERVENE BROUGHT BY AND IN BEHALF OF LOCAL #1505 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AFL-CIO—Filed May 10, 1961

The intervenor Local #1505 International Brotherhood of Electrical Workers AFL-CIO is an unincorporated association with its principal office in Waltham, Massachusetts and is a labor organization within the meaning of the Labor-Management Relations Act of 1947.

[fol. 55] Said Local #1505 moves for leave to intervene in the above-entitled proceedings on the grounds

1. That it has a substantial interest in the subject matter of the action.

2. That its interest will be seriously affected by the results of any arbitration proceedings as prayed for by the plaintiff.

3. That if the plaintiff's prayer for arbitration is granted a large number of employees of the defendant who are members of the intervenor will be substantially affected by the outcome of the said arbitration proceedings; and that if the prayer of the plaintiff is granted that the rights and claim of all parties could be properly and definitely determined by one arbitration proceeding.

4. That if the plaintiff's prayer for arbitration is granted and your petitioner is not hereby given permission to be a party to said arbitration proceedings that there will undoubtedly be further and protracted proceedings in order

to determine the rights of the intervenor and its members who are now performing the work which the plaintiff claims should be performed by its members.

By its attorneys, Timothy J. Murphy, Donald Stahl.

June 19, 1961
CAFFREY D J
"After Hearing in Open Ct,
Taken under Advisement
W. J. Lyons Dep Clk

[fol. 56]

IN UNITED STATES DISTRICT COURT

ANSWER OF INTERVENOR, LOCAL #1505, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO—Filed June 22, 1961

Now comes the intervenor and answers to the Plaintiff's Bill of Complaint as follows:

1. The intervenor states that it does not know of any violation of any contract between the plaintiff and the defendant in this action, but further answering the intervenor says that the allegations in this complaint do directly affect a contract presently existing between the intervenor and the defendant, Raytheon Company.

2. The intervenor admits the allegations in Paragraph 2 of the Complaint.

3. The intervenor admits the allegations in the Complaint insofar as they are material in this action.

4. The intervenor admits the allegations contained in Paragraph 4 of the Complaint.

5. The intervenor admits the allegations contained in Paragraph 5 of the Complaint.

6. The intervenor is without any knowledge or information concerning the allegations contained in Paragraph 6 and therefore calls upon the plaintiff to prove the same.

7. The intervenor is without any knowledge or information concerning the allegations contained in Paragraph 7 and therefore calls upon the plaintiff to prove the same.

8. The intervenor is without any knowledge or information concerning the allegations contained in Paragraph 8 and therefore calls upon the plaintiff to prove the same.

9. The intervenor is without any knowledge or information concerning the allegations contained Paragraph 9 and therefore calls upon the plaintiff to prove the same.

10. The intervenor is without any knowledge or information concerning the allegations contained in Paragraph 10 and therefore calls upon the plaintiff to prove the same.

[fol. 57] 11. The intervenor is without any knowledge or information concerning the allegations contained in Paragraph 11 and therefore calls upon the plaintiff to prove the same.

12. The intervenor is without any knowledge or information concerning the allegations contained in Paragraph 12 and therefore calls upon the plaintiff to prove the same.

13. The intervenor is without any knowledge or information concerning the allegations contained in Paragraph 13 and therefore calls upon the plaintiff to prove the same.

14. As a first affirmative claim the intervenor alleges that the work referred to in Paragraph 8 of the Complaint is now being performed and has been so performed for many years by the members of Local #1505 International Brotherhood of Electrical Workers, AFL-CIO and that any hearing or arbitration as prayed for by the plaintiff in its Complaint would directly, seriously and adversely affect the rights of your intervenor and its members and might very well result in protracted litigation.

15. As a second affirmative claim the intervenor says that on the 23rd day of August, 1948 the intervenor and the plaintiff herein entered into an agreement in which the plaintiff and the intervenor spelled out their respective rights insofar as the defendant, Raytheon Company, is concerned.

16. As a third affirmative claim the intervenor says that the subject matter of the controversy had previously been heard and determined by the National Labor Relations Board under Section 9 (c) of the National Labor Relations Act in which hearing the plaintiff, defendant, and intervenor were parties, and that the decision of the said Board is still in full force and effect.

By its attorneys, Timothy J. Murphy, Donald Stahl.

[fol. 58]

IN UNITED STATES DISTRICT COURT

ORDER GRANTING MOTION OF LOCAL NO. 1505 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO—September 29, 1961

CAFFREY, D.J.

This is an action brought by the plaintiff, Local Lodge No. 1836 of District 38 of the International Association of Machinists, AFL-CIO, against Raytheon Manufacturing Company, under the provisions of 29 U.S.C.A., Sec. 185 et seq., in which plaintiff seeks an order directing the defendant Raytheon to submit an alleged grievance to arbitration in accordance with certain provisions of a contract between plaintiff and defendant.

The grievance sought to be arbitrated is concerned with the division of certain work at Raytheon between Raytheon employees who are members of the plaintiff Union and employees who are members of Local No. 1505, International Brotherhood of Electrical Workers, AFL-CIO. Local No. 1505 has filed a petition for leave to intervene in this case, which petition is opposed by plaintiff Local Lodge No. 1836. The motion for leave to intervene has been orally argued and the parties have filed memoranda of law in support of their positions. Upon consideration of the oral argument and the various memoranda of law filed herein, it is

ORDERED

Motion for leave to intervene allowed.

Andrew A. Caffrey, U.S.D.J.

IN UNITED STATES DISTRICT COURT

MOTION OF LOCAL LODGE NO. 1836, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO FOR SUMMARY JUDGMENT—Filed July 11, 1961

Now comes Local Lodge No. 1836 of District 38 of the International Association of Machinists, AFL-CIO and [fol. 59] moves the Court to enter judgment ordering the defendant to submit the grievance in dispute in this case to arbitration in accordance with Rule 56 of the Federal Rules of Civil Procedure.

Lodge No. 1836 of District 38 of the International Association of Machinists, AFL-CIO, By Arthur J. Flamm.

IN UNITED STATES DISTRICT COURT

MOTION OF DEFENDANT, RAYTHEON COMPANY, FOR SUMMARY JUDGMENT AND MOTION TO DISMISS FOR LACK OF JURISDICTION OF THE SUBJECT MATTER—Filed November 3, 1961

The Defendant, Raytheon Company, by Robert L. Molinar, its attorney, hereby moves the Court to enter summary judgment for the Defendant in accordance with the provisions of Rule 56 of the Federal Rules of Civil Procedure on the ground that the pleadings show that the Defendant is entitled to a judgment as a matter of law.

The Defendant, by its said attorney, hereby further moves the Court to dismiss the above entitled action because it appears upon the face of the complaint that the Court lacks jurisdiction of the subject matter.

Raytheon Company, By Robert L. Molinar.

CAFFREY D J
Nov. 6, 1961
After Argument by Counsel
By the Ct.—Under Advisement
(2 wks to file briefs) W J Lyons Dep Clk

[fol. 60]

IN UNITED STATES DISTRICT COURT

OPINION—January 24, 1962

CAFFREY, D.J.

This is an action in which petitioner, Local Lodge No. 1836 of District 38 of the International Association of Machinists, AFL-CIO (Union), seeks enforcement of an alleged agreement to arbitrate a dispute between it and the respondent, Raytheon Manufacturing Company (Raytheon), an employer of members of the Local.

The petitioner is an unincorporated association with a principal place of business in Waltham, Massachusetts. It invokes the jurisdiction of this Court under Section 301(a) of the Labor Management Relations Act of 1947, 29 U.S.C.A. Sec. 185, et seq. Petitioner is a labor organization within the meaning of the Act. The respondent is a Delaware corporation with a place of business in Waltham, Massachusetts. The respondent is engaged in an industry affecting interstate commerce. Local Lodge 1505, International Brotherhood of Electrical Workers (Intervenor) is a labor organization within the meaning of the Act and it, also, represents a group of Raytheon employees. Both Intervenor and Union represent employees of Raytheon with respect to wages, hours, and other conditions of employment.

On August 8, 1956, Raytheon and Union entered into a collective bargaining agreement which was to be effective from August 8, 1956 to May 31, 1959. Article I of the agreement provided:

> "The Company recognizes the Union as the sole and exclusive collective bargaining agent with respect to wages, hours and conditions of employment for all of the Company's employees in the Company's presently existing Massachusetts plants while, during the life [fol. 61] of this Agreement, they are classified as Experimental and Development Machinists A, B and C; Machinists A, B and C; Maintenance Machinists A and B; Die Makers A, B and C; Tool Makers A, B and C;

and Tool Grinders A, B and C, in accordance with the job classification descriptions in effect on June 1, 1953, incorporated herein by reference, or as apprentices to such job classifications. The labor grades of such occupational titles are shown in Appendix 'A.' Such persons are hereinafter referred to as 'the employees,' and such employees together are referred to as 'the unit.' All other employees and supervisors as defined in the Act are excluded from this Agreement."

On November 7, 1958, Union filed a grievance alleging that Raytheon had violated Article I of the agreement by assigning work encompassed within this agreement to employees outside the bargaining unit at a time when the employees within the bargaining unit were ready, willing, and able to perform such work. (The work in question was assigned to members of Intervenor by Raytheon.) Thereafter, Union and Raytheon discussed this grievance at some length and on February 4, 1959 Union requested arbitration. This request was later withdrawn pending further discussions between the parties.

On September 8, 1959, the parties entered into a collective bargaining agreement to be effective from September 8, 1959 to May 31, 1961. Article I was carried forward in this new agreement without change. The parties continued to have additional discussions about the work-assignment dispute and failing to reach any agreement as a result of these discussions, Union again requested arbitration by letter dated May 13, 1960, which request was refused by Raytheon's letter dated May 26, 1960.

[fol. 62] The answer filed herein on behalf of Raytheon discloses no real issue as to any material fact, it being admitted that Exhibits A and E are copies of the agreements; that Exhibit C is a copy of the job descriptions referred to in Article I; the Exhibits B and D establish receipt by Raytheon of the grievance; that arbitration was requested through Union's letters dated February 4, 1959 and May 13, 1960; and that arbitration was refused by Raytheon's letter dated May 26, 1960.

This matter is presently before the Court on cross-motions for summary judgment. Union's motion seeks sum-

mary judgment in the form of an order for arbitration and Intervenor and Raytheon's motions for summary judgment seek dismissal. The basic objection urged by respondents Raytheon and Intervenor is that this Court lacks jurisdiction. Respondents argue that the National Labor Relations Board has exclusive jurisdiction over work-assignment disputes which cannot be resolved by the parties. The cases cited by them for this proposition, *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236 (1959) and *Garner* v. *Teamsters Union*, 346 U.S. 485 (1953) do not establish this proposition in the context of the instant case. There is, however, authority clearly and explicitly holding that district courts do have jurisdiction under Section 301(a). See *Local 33, International Hod Carriers* v. *Mason Tenders District Council*, 291 F. 2d 496 504 (C.A. 2, 1961), where, speaking for the Court, Judge Medina said:

> "It is obvious from reading these sections that this statutory scheme does not purport to give the Board general supervisory powers over controversies between labor organizations relation to work assignments. The Board may act only when a charge has been filed and a mere disagreement over work assignments is not enough to create an unfair labor practice. [fol. 63] . . . We think to hold that the District Court has no jurisdiction would run counter to the position which Congress has accorded to voluntary adjustments."

A similar ruling appears in the opinion of Chief Judge Sweeney in *Freight Drivers & Helpers Local Union 557* v. *Quinn Freight Lines*, 195 F. Supp. 180 (D. Mass. 1961).

I rule that this Court does have jurisdiction to entertain an action of the instant type under the Labor Management Relations Act.

Raytheon's second major argument is that it never agreed to arbitrate work-jurisdiction matters when it entered into this collective bargaining agreement with Union. That this contention must be resolved adversely to Raytheon is clearly demonstrated by the opinion of the Supreme Court in the case of *United Steelworkers* v. *Warrior*

& Gulf Co., 363 U.S. 574 (1960), where Mr. Justice Douglas observed, pp. 582-583:

> "An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage. . . . We do not agree with the lower courts that contracting-out grievances were necessarily excepted from the grievance procedure of this agreement."

The contract between Raytheon and Union in the instant case provides, in Article XVIII, Sec. 18.0:

> "For the purposes of this Agreement the term 'grievance' means any dispute between the Company and the Union, or between the Company and any employee, concerning the interpretation of this Agreement in its [fol. 64] application to any particular situation or as to whether it has been observed or performed."

I rule that the grievance herein is an arbitrable grievance within the agreement between Raytheon and Union.

The remaining question is whether or not Intervenor has standing to participate in the arbitration between Raytheon and Union over the objections of Union. In its brief Raytheon urges upon the Court language in the case of *Textile Workers Union* v. *Lincoln Mills of Alabama*, 353 U.S. 448, 457 (1957), to the effect that:

> "Some (problems) will be solved by looking at the policy of the legislation and fashioning a remedy that will effectuate that policy. The range of judicial inventiveness will be determined by the nature of the problem."

Raytheon then argues that the facts of the instant case call for application of judicial inventiveness. I rule that this argument, while tempting, may not properly be accepted. What Raytheon is urging the Court to do in this case is to create and confer upon Intervenor a *right* of in-

tervention born of the national labor policy as distinguished from merely affording or fashioning a new *remedy*. In its contract with Raytheon, Union promised to arbitrate upon the happening of certain contingencies and Raytheon made a reciprocal promise. Neither Raytheon nor Union agreed to arbitrate with any third party, however closely related that third party may be to the subject matter of the arbitration. I do not conceive that the national labor policy, which commends to district judges the fashioning of new *remedies*, can be fairly construed to authorize district courts to amend labor management agreements and thereby [fol. 65] create new *rights* in third parties who are strangers to the agreement, and simultaneously to impose uncontracted-for obligations upon the parties to the agreement in derogation of the agreement as made.

Union's motion for summary judgment is allowed. Raytheon and Intervenor's motions for summary judgment and to dismiss are denied.

Andrew A. Caffrey, U.S.D.J.

IN UNITED STATES DISTRICT COURT

JUDGMENT—January 24, 1962

After argument of counsel and in accordance with Opinion handed down this date, it is

ORDERED:

1. That the respondent Raytheon Manufacturing Company submit to arbitration the grievance described in the complaint filed herein, in accordance with Article XVIII of the agreement between petitioner and respondent.

2. Application of Local Lodge 1505 for leave to participate in said arbitration is denied.

3. Petitioner Local Lodge No. 1836 may recover its costs herein.

By the Court,

Dorothy C. Clark, Deputy Clerk.

Andrew A. Caffrey, U.S.D.J.

[fol. 66]

IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL BY LOCAL #1505, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS—
Filed February 8, 1962

And now comes Local #1505 International Brotherhood of Electrical Workers and appeals from the judgment entered on January 24, 1962 to the United States Court of Appeals for the First Circuit.

By its attorneys, Timothy J. Murphy, Donald Stahl.

IN UNITED STATES DISTRICT COURT

MOTION FOR STAY BY LOCAL #1505, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS—
Filed February 8, 1962

And now comes Local #1505 International Brotherhood of Electrical Workers and moves that further proceedings be stayed pending appeal to the United States Court of Appeals for the First Circuit.

By its attorneys, Timothy J. Murphy, Donald Stahl.

CAFFREY D J
Mar. 5, 1962
By the Ct. After argument
W J Lyons, Dep Clk

IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL BY DEFENDANT RAYTHEON COMPANY—
Filed February 21, 1962

Raytheon Company, Defendant in the above named action, hereby renders notice that it appeals to the United [fol. 67] States Court of Appeals for the First Circuit from the judgment and order entered in this action on January 24, 1962.

Raytheon Company, By its attorney, Robert L. Molinar.

Dated: February 21, 1962.

IN UNITED STATES DISTRICT COURT

MOTION BY DEFENDANT, RAYTHEON COMPANY FOR STAY OF JUDGMENT PENDING APPEAL—Filed February 21, 1962

Raytheon Company, Defendant in the above named action, hereby moves the court to suspend execution of judgment and order entered in this action on January 24, 1962 pending Defendant's appeal to the United States Court of Appeals for the First Circuit.

Raytheon Company, By its attorney, Robert L. Molinar.

Dated: February 21, 1962

CAFFREY D J
Mar. 5, 1962
By the Ct. After Arguments
W J Lyons, Dep Clk

IN UNITED STATES DISTRICT COURT

ORDER GRANTING MOTION OF LOCAL LODGE NO. 1505, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS FOR STAY PENDING APPEAL—March 9, 1962

CAFFREY, D.J.

Local Lodge No. 1505, International Brotherhood of Electrical Workers, Intervenor herein, has filed a motion [fol. 68] for stay of the Order entered January 24, 1962, pending its appeal to the United States Court of Appeals for the First Circuit.

After argument by counsel, it is

ORDERED:

Appellant's motion for stay pending appeal is allowed. The allowance of this stay is expressly conditioned upon appellant's complying with the following time schedule in order that this case may be ready for argument at the May session of the Court of Appeals for this Circuit.

1. Appellant must docket its appeal with the Clerk of the Court of Appeals on or before March 12, 1962.

2. Appellant must furnish appellee and the Clerk of the Court of Appeals with a statement of the parts of the record proposed to be printed in the appendix to its brief, and with a statement of points upon which it intends to rely, on or before March 22, 1962.

3. Appellant must file its brief and record appendix, if any, thereto, with the Clerk of the Court of Appeals and serve the appellee, on or before April 3, 1962.

Andrew A. Caffrey, U.S.D.J.

IN UNITED STATES DISTRICT COURT

ORDER GRANTING MOTION OF RESPONDENT, RAYTHEON MANUFACTURING COMPANY FOR STAY PENDING APPEAL—March 9, 1962

CAFFREY, D.J.:

The respondent Raytheon Manufacturing Company has filed a motion for stay of the Order entered on January 24, 1962, pending its appeal to the United States Court of Appeals for the First Circuit.

[fol. 69] After argument by counsel, it is

ORDERED:

Appellant's motion for stay pending appeal is allowed. The allowance of this stay is expressly conditioned upon appellant's complying with the following time schedule in order that this case may be ready for argument at the May session of the Court of Appeals for this Circuit.

1. Appellant must docket its appeal with the Clerk of the Court of Appeals on or before March 12, 1962.

2. Appellant must furnish appellee and the Clerk of the Court of Appeals with a statement of the parts of the record proposed to be printed in the appendix to its brief, and with a statement of points upon which it intends to rely, on or before March 22, 1962.

3. Appellant must file its brief and record appendix, if any, thereto, with the Clerk of the Court of Appeals and serve the appellee, on or before April 3, 1962.

Andrew A. Caffrey, U.S.D.J.

[fol. 70]

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

No. 5975

LOCAL NO. 1505 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, Intervenor, Appellant,

v.

LOCAL LODGE NO. 1836 OF DISTRICT 38 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, et al., Appellees;

No. 5976

RAYTHEON COMPANY, Defendant, Appellant,

v.

SAME.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Before Hartigan and Aldrich, Circuit Judges, and Wyzanski, District Judge.

Donald Stahl, with whom Timothy J. Murphy was on brief, for Local No. 1505 International Brotherhood of Electrical Workers, AFL-CIO.

Paul F. Hannah and Robert L. Molmar for Raytheon Company.

Arthur J. Flamm, with whom Segal & Flamm was on brief, for Local Lodge No. 1836 of District 38 of the International Association of Machinists, AFL-CIO.

[fol. 71]

OPINION OF THE COURT—June 4, 1962

Aldrich, Circuit Judge. This is an action to compel arbitration. In 1946 Local No. 1505, International Brotherhood of Electrical Workers, AFL-CIO (IBEW), was certified as the bargaining representative for all production and maintenance employees at certain plants operated in Massachusetts by Raytheon Manufacturing Company, now Raytheon Company. In 1952 Local Lodge No. 1836 of District 38 of the International Association of Machinists, AFL-CIO (IAM), was certified as representative for certain machinists theretofore included in the IBEW bargaining unit. Both unions since certification have maintained collective bargaining agreements with Raytheon. IAM's contains extensive provisions for arbitration.[1] The record does not show, but it was asserted during argument and not contradicted, that IBEW's does also. In 1958 IAM demanded that certain work hitherto performed by members of IBEW be taken away and assigned to IAM members. Raytheon declined and, following unsuccessful grievance procedure, IAM requested arbitration. Upon the rejection of that request IAM brought the present action against Raytheon. The court permitted IBEW to intervene. However, upon cross motions for summary judgment the court thereafter ordered bilateral arbitration, denying IBEW's request to participate. Raytheon and IBEW appeal.

We consider first IBEW's claim. Concededly, even if it has an agreement to arbitrate, it is not an agreement to arbitrate with IAM. During oral argument we asked IAM how, nevertheless, it could be injured by tripartite arbitration. Counsel admitted he could think of no harm, but insisted that arbitration is purely a matter of contract and [fol. 72] that it has a contractual right to arbitrate with Raytheon alone. In view of the factual situation this obviously would not make arbitration a true instrument for industrial peace. However, we need not consider whether, regardless of IAM's contentions, we have authority to adopt

[1] These provisions do not in specific terms cover the present situation, and Raytheon points to other provisions which it says preclude arbitration. We do not reach this issue.

equitable measures, because we think there is another solution to the difficulties it insists upon creating or, at least, insists on not avoiding. We believe that exclusive jurisdiction to resolve the conflict between the parties is in the Labor Board whose certifications have permitted these overlapping claims.[2]

It is true that no unfair labor practice may have been committed. *Cf. Tacoma Printing Pressmen's Union*, 1961, 131 N.L.R.B. 1090. Even had there been, this might not pre-empt the district court's jurisdiction under 29 U.S.C. § 301. *Cf. United Steelworkers of America* v. *New Park Mining Co.*, 10 Cir., 1959, 273 F.2d 352; *Independent Petroleum Workers* v. *Esso Standard Oil Co.*, 3 Cir., 1956, 235 F.2d 401. See also Meltzer, The Supreme Court, Congress, and State Jurisdiction Over Labor Relations: II, 59 Colum. L. Rev. 269, 282 (1959). But we cannot agree with IAM's contention that the issue does not involve a matter of representation. Its basic demand was predicated upon the company's alleged violation of the recognition clause. IAM protests that it is not seeking to represent other employees; it merely wishes their work. We are not impressed by this distinction. Certification and representation are both bottomed on work categories. On the facts here alleged a decision by the arbitrator in IAM's favor, if erroneous, would invade IBEW's certification. Arbitration, by IAM's [fol. 73] own admission, is but a matter of contract. A union by contract with an employer cannot define the scope of its certification; that is the Board's function.[3] Not only

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[2] As is customary in actions to compel arbitration IAM does not submit the merits of the controversy to the court, but says that this is an issue for the arbitrator. We need not consider how we would decide if IAM showed that its certification was so unambiguous that there was nothing for the Board to resolve.

[3] As the court said in this respect in *Portland Web Pressmen's Union* v. *Oregonian Publishing Co.*, 9 Cir., 1960, 286 F.2d 4, 9, *cert. den.* 366 U.S. 912, "the parties could not by private agreement take away from the Board the right to make those determinations." See also *International Chemical Workers Union* v. *Olin Mathieson Chemical Corp.*, D.C.S.D. Ill., 1962, 202 F.Supp. 363, 365; *International Union of Doll & Toy Workers* v. *Metal Polishers Union*, D.C.S.D. Cal., 1960, 180 F.Supp. 280.

has the Board in the past made necessary clarifications. *St. Regis Paper Co.*, 1961, 130 N.L.R.B. 1235, but jurisdictional disputes between unions are precisely its province. *NLRB* v. *Radio & Television Broadcast Engineers Union*, 1961, 364 U.S. 573. It is appropriate that this jurisdiction be exclusive. See Meltzer, *op. cit. supra*, at 299. The case relied upon by the court below, *Local 33, International Hod Carriers Union* v. *Mason Tenders District Council*, 2 Cir., 1961, 291 F.2d 496, involved an intra-union dispute between two locals of no possible Board concern, and is inapposite for reasons stated in the opinion. See 291 F.2d at 503.

Judgment will be entered reversing the judgment of the District Court and ordering the complaint dismissed.

[fol. 74]

JUDGMENT—June 4, 1962

This cause came on to be heard on appeals from the United States District Court for the District of Massachusetts, and was argued by counsel.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The judgment of the District Court is vacated, and the cause is remanded to the District Court with directions to dismiss the complaint.

By the Court:

Roger A. Stinchfield, Clerk.

[fol. 75]

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

No. 5975

LOCAL NO. 1505, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, Intervenor, Appellant,

v.

LOCAL LODGE NO. 1836 OF DISTRICT 38 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, et al., Appellees;

No. 5976

RAYTHEON COMPANY, Defendant, Appellant,

v.

SAME.

CONSOLIDATED PETITION FOR REHEARING OR TO AMEND ORDER

1. On June 4, 1962, this Court handed down its opinion in these cases. The Court held that the National Labor [fol. 76] Relations Board had exclusive jurisdiction of this dispute and in substance referred the parties to the Board for the resolution of their controversy.

The parties had previously applied to the Board for relief without success. On July 3, 1953, the I.A.M. filed a representation petition for a unit of "all employees however classified who perform or substantially perform work of machinists, tool makers, die makers and grinders." On August 25, 1953, Raytheon filed a Motion for Clarification of Certificate in which it set out the areas of dispute and requested a determination. (Appendix p. 4). The I.B.E.W. opposed the latter motion. (Appendix p. 8). The

Board on November 10, 1953 denied Raytheon's motion and dismissed the I.A.M.'s petition. (Appendix p. 9)

Having sought relief from the Board without success, the I.A.M. brought suit under Section 301 of the Act for breach of its collective bargaining agreement. The Supreme Court in *Local 174, I.B.T.C.W.H.* v. *Lucas Flour Company*, 369 U.S. 95, ft. 9, plainly states that the Board's exclusive jurisdiction does not attach under principles of pre-emption when suits cognizable under Section 301 are instituted for violation of collective bargaining contracts. If this Court's decision is based on the principle that one must exhaust his administrative remedies before seeking judicial relief, this was accomplished by the I.A.M.'s Petition for Representation and Raytheon's Motion for Clarification of Certificate.

2. If the Court chooses not to rehear this matter, we urge that it amend its order so as to retain jurisdiction of this case pending a determination by the National Labor Relations Board. This would avoid unnecessary delay and [fol. 77] the expense of bringing a new action in the event the Board should hold that it has no jurisdiction over this dispute.

Respectfully submitted,

Arthur J. Flamm, Segal & Flamm, 11 Beacon Street, Boston, Mass., Attorneys for Appellee, Local Lodge No. 1836, etc.

Certificate of Counsel

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.

Arthur J. Flamm, Attorney for Petitioner.

[fol. 78]

APPENDIX

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Case No. 1-RC-2230

In the Matter of

RAYTHEON MANUFACTURING COMPANY, Employer

and

LODGE 1836 OF DISTRICT 38 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL, Petitioner.

MOTION FOR CLARIFICATION OF CERTIFICATE

Raytheon Manufacturing Company, Employer in the above-entitled case, hereby moves the Board to clarify its certificate of April 24, 1952 in the above-entitled case, whereby the Company was directed to recognize Lodge 1836 of District 38 of the International Association of Machinists, AFL (herein called "IAM") as the collective bargaining representative for certain of its employees in a unit defined as follows:

> "All of the employer's employees classified as Experimental and Development Machinists, A, B, and C; Machimists A, B, and C; Maintenance Machinists; Die Makers A, B, and C; Tool Makers A, B, and C; and Tool Grinders A, B, and C; who were employed during the payroll period ending March 16, 1952, excluding all other employees and supervisors as defined in the Act."

This certification resulted in a carving out of the unit above described from the then existing multi-plant, production and maintenance unit covering the Company's

plants in the Commonwealth of Massachusetts for which Local 1505 of the International Brotherhood of Electrical [fol. 79] Workers, AFL (herein called "IBEW") was certified in 1946.

Considerable confusion exists between the Company and the unions as to the scope of the unit described in the certificate of April 24, 1952. By its terms, the certificate includes only employees in the listed occupational classifications employed during the payroll period ending March 16, 1952. Accepted literally, this language could be interpreted only as applicable to (1) employees in one of the listed occupational classifications on March 16, 1952, and (2) employees on March 16, 1952 who thereafter are classified in one of the listed occupational classifications. By such a literal interpretation, there would be excluded from the unit:

(a) any employee hired after March 16, 1952;

(b) any employee performing work falling within the precise scope of one of the listed classifications but erroneously classified on March 16, 1952;

(c) any employee classified under an occupational classification newly created after the final petition was framed, early in the hearing leading up to the certificate; and

(d) any employee, regardless of work performed, who is classified under an occupational classification established after March 16, 1952.

During the period that has transpired since the Board's certificate, it has been clear that neither of the unions concerned so interpret it. For instance, the IBEW has claimed that certain employees classified as Machinists and performing work confined solely to the set up and operation of engine lathes should be reclassified as Engine Lathe Set Up and Operators, a presently existing classification applicable to such work falling within the IBEW unit. On the other hand, the IAM has claimed the right to represent employees classified as Delay Line Machinists, a classification established shortly prior to the Board's decision in

[fol. 80] Case No. 1-RC-2230, who are now represented by the IBEW inasmuch as the classification was not listed in the Board's certificate. In both instances, the unions are in vigorous disagreement. These cases are only typical of those which have arisen since certification of the IAM..

The Company simply does not know and has no way of knowing how properly to interpret the certificate. If the board intended something other than that which the language of the certificate conveys, then there is a real ambiguity to be resolved. If it did intend what the language of the certificate conveys, then the unit is even more novel than the Company has considered to date. The Company has sought from both unions an agreement as to their respective representation rights and, failing this, a tripartite arrangement which will provide a final settlement of disputes arising under their certificates to be binding on all parties. It has been unsuccessful in these efforts as one of the unions has steadfastly refused to discuss the matter jointly with the other. Lacking such an agreement, the Company can look only to the Board for an authoritative determination of the respective rights of the two unions to represent its employees.

The need for a determination is a pressing one at this time. The IAM has indicated that unless some clarification is forthcoming it intends to take such action as may be necessary to have its problems resolved ultimately under the jurisdictional disputes provisions of the Act. From the Company's point of view, this course would be highly undesirable in that such harmony as now exists in its relationships with these unions is very likely to be destroyed in the process and, moreover, the many interrelated problems arising out of the certificate are not susceptible of a piecemeal resolution of the type afforded under the jurisdictional disputes provisions.

The Company believes that the interests of all parties concerned will best be served by a hearing and a deter- [fol. 81] mination of the Board as to the proper interpretation of its certificate in Case No. 1-RC-2230.

The Company respectfully urges the Board to grant this Motion.

Respectfully submitted,

Richard J. Flynn, Attorney for Raytheon Manufacturing Company.

Dated: August 25, 1953

Certificate of Service

I hereby certify that I have this day served the foregoing Motion upon all parties of record in this proceeding by causing copies thereof to be mailed to them at their last known address.

Dated: August 24, 1953

Richard J. Flynn

Bernard L. Alpert, Regional Director, National Labor Relations Board, First Region, 24 School Street, Boston 8, Massachusetts;

Plato E. Papps, Esq., IAM Building, Mount Vernon Place, Washington, D.C.;

William Gordon, Esq., 36 Pearl Street, Hartford, Connecticut;

Lodge 1836, International Association of Machinists, AFL, 5 Park Square—Room 32, Boston 16, Massachusetts;

Local 1505, International Brotherhood of Electrical Workers, AFL, 251 Washington Street, Newton, Massachusetts.

[fol. 82]

Opposition to Motion for Clarification of Certificate.

The undersigned, Local 1505, International Brotherhood of Electrical Workers, AFL, was the Intervenor in the above-entitled case. Local 1505 opposes the Employer's Motion for Clarification of Certificate, dated August 24, 1953.

The hearing in this case lasted 19 hearing days. The matter was briefed in great detail both on the principal case and on the motions for reconsideration. Although Local 1505 did not and does not agree with the Board's unit determination it cannot be presumed that the Board did not define the unit with care.

The unit is unique both in law and on the facts of the case, but its scope was precisely drawn by the Board. It covers the employees classified in the 16 named categories and no others. "Clarification" now, when both Petitioner and Intervenor are respectively in the terms of their second annual contracts since the Certification, could only result in leaving the unit as it is or in extending it. To leave the unit as it is requires no clarification. To extend it would compound the confusion already caused by carving out of a long existing production and maintenance unit a group with no craft identity and no community of interest; extending the unit would, in all probability, also have the undesirable effect of constraining within its scope employees who were not eligible to vote in the election and thus had no opportunity to express their own desires; indeed the inclusion of such employees might, in view of the narrow majority obtained, easily have changed the results of the election.

Respectfully submitted,

Local 1505, International Brotherhood of Electrical Workers, By Wm S. Gordon Jr., Its Attorney.

Dated: September 9, 1953

[fol. 83]

Order Denying Motion for Clarification

On September 14, 1953, the Board received from the Employer in the above-entitled case a Motion for Clarification of Certificate, requesting the Board to clarify in various respects its certificate of April 24, 1952, in that case, in favor of the Petitioner therein. Local 1505, International Brotherhood of Electrical Workers has filed opposition to said motion. The Board having duly considered the matter,

It Is Hereby Ordered that said motion be granted only to the extent of striking from said certificate the following language: "who were employed during the payroll period ending March 16, 1952."

Dated, Washington, D.C., November 10, 1953.

By direction of the Board:

Ogden W. Fields, Associate Executive Secretary.

National Labor Relations Board
Washington 25, D. C.

November 10, 1953

Plato E. Papps, Esq.
IAM Bldg.
Mt. Vernon Pl., N.W.
Washington, D.C.

Re: *Raytheon Manufacturing Co.*
Case No. 1-RC-3342

Dear Sir:

The Board has considered your request for review of the Regional Director's refusal to issue Notice of Hearing in the above case and has decided that the action of the Regional Director in dismissing the petition should [fol. 84] be sustained on the ground that the unit sought in the petition was inappropriate for the purposes of collective bargaining.

Very truly yours,

Ogden W. Fields, Associate Executive Secretary.

cc: Bernard L. Albert, Director—Region 1, Raytheon Mfg. Co., Waltham 54, Mass.

IBEW—Local 1505, Att: Mr. Henry Campbell, Bus. Agent, 251 Washington St., Newton, Mass.

William S. Gordon, Esq., Gordon, Muir and Fitzgerald, 36 Pearl St., Hartford 6, Conn.

[fol. 85]

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

No. 5975

LOCAL NO. 1505 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, Intervenor, Appellant,

v.

LOCAL LODGE NO. 1836 OF DISTRICT 38 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, et al., Appellees;

No. 5976

RAYTHEON COMPANY, Defendant, Appellant,

v.

SAME.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Before Hartigan and Aldrich, Circuit Judges, and Wyzanski, District Judge.

Donald Stahl, with whom Timothy J. Murphy was on brief, for Local No. 1505 International Brotherhood of Electrical Workers, AFL-CIO.

Paul F. Hannah and Robert L. Molinar for Raytheon Company.

Arthur J. Flamm, with whom Segal & Flamm was on brief, for Local Lodge No. 1836 of District 38 of the International Association of Machinists, AFL-CIO.

[fol. 86]

OPINION OF THE COURT

ON PETITION FOR REHEARING OR TO AMEND ORDER—
July 19, 1962

Aldrich, Circuit Judge. We write this opinion on IAM's petition for rehearing not because any opinion is required, but to record our special objections to the petition. The bar should understand that such petitions are to be filed only in unusual circumstances. In the absence of clear error they are not to be used to reargue matters already argued and determined. Conversely, they are not for the purpose of presenting matters which should have been but, without good cause, were not argued before, *Carr* v. *FTC*, 1 Cir., 1962, 302 F.2d 688, 691, and particularly they are not, as here, to be used to introduce a record which was not even presented below.

Although Raytheon and IBEW argued fully the jurisdictional issue upon which we subsequently rested our decision, IAM now seeks for the first time to call to our attention certain proceedings occurring before the Board in 1953 which it says are pertinent to this issue. As presently recited the extent of this pertineney is not fully clear. In the absence of palpable error, and because of manifest untimeliness, we will not consider them.

Secondly, although IAM appears to recognize that we have held that resolution of an ambiguity in its certification is a matter exclusively for the Board in spite of the fact that pre-emption, as such, does not apply to actions under section 301, *Local 174, Teamsters Union* v. *Lucas Flour Co.*, 1962, 369 U.S. 95, 101 fn. 9, in the same breath it asks us, to save expense, to amend our mandate to order the district court to retain jurisdiction "in the event the Board should hold that it has no jurisdiction over this dispute." The only circumstance we can presently think of under which the Board might be said to lack "jurisdic-
[fol. 87] tion" would be if no ambiguity exists, a matter we have previously adverted to, fn. 2, *supra*. Such a contention would be inconsistent with IAM's position hitherto, and it is too late to advance it now.

The petition for rehearing is denied.

On the same day, July 19, 1962, the following order was entered in these cases:

ORDER OF COURT—July 19, 1962

It is ordered that the petition for rehearing or to amend order be, and the same hereby is, denied.

By the Court:

Roger A. Stinchfield, Clerk.

Thereafter, on July 26, 1962, mandates in these two cases were stayed.

[fol. 88] Clerk's certificate to foregoing transcript (omitted in printing).

[fol. 89]

SUPREME COURT OF THE UNITED STATES

No. 419, October Term, 1962

LOCAL LODGE NO. 1836 OF DISTRICT 38 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, et al.,
Petitioners,

vs.

LOCAL NO. 1505 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, et al.

ORDER ALLOWING CERTIORARI—Filed November 19, 1962

The petition herein for a writ of certiorari to the United States Court of Appeals for the First Circuit is granted, and the case is transferred to the summary calendar. The Solicitor General is invited to file a brief setting forth the views of the United States.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Office-Supreme Court, U.S.
FILED
SEP 6 1962
JOHN F. DAVIS, CLERK

In the
Supreme Court of the United States

OCTOBER TERM, 1962.

No. 419

LOCAL LODGE No. 1836 OF DISTRICT 38 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, ET AL.,
PETITIONERS,

v.

LOCAL No. 1505 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO,
AND
RAYTHEON COMPANY,
RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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OCTOBER TERM, 1962.

No.

LOCAL LODGE No. 1836 OF DISTRICT 38 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, ET AL.,

PETITIONERS,

v.

LOCAL No. 1505, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO,
AND
RAYTHEON COMPANY,

RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit, entered in the above entitled cases on June 4, 1962.

Opinions Below

The opinions of the Court of Appeals for the First Circuit are reprinted in Appendix "A" appended hereto. The opinion of the District Court is reported in 201 F. Supp. 334 (1962) and is reprinted in the Record herein commencing R. 41.

Jurisdiction

The opinion of the Court of Appeals was filed on June 4, 1962 (R. 51-54) and on the same day judgment was entered (R. 55). The jurisdiction of this Court is invoked under 28 U.S.C.A. Sec. 1254(1).

Question Presented

Whether the federal courts have jurisdiction under Section 301 of the Labor-Management Relations Act to compel arbitration of a grievance alleging that the employer violated the agreement by assigning work covered by the agreement to employees outside the bargaining unit?

Statute Involved

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*) are printed as Appendix "B" to this petition (pp. 10-12).

Statement

This suit is brought under Section 301 of the Labor-Management Relations Act, 1947, 29 U.S.C.A., Section 185, to compel arbitration pursuant to the terms of a collective bargaining contract.

On August 8, 1956, the respondent (hereinafter referred to as the "Company") and the petitioner (hereinafter referred to as the "I.A.M.") entered into a collective bargaining agreement (R. 6). Article I of said agreement set forth the job classifications covered by the agreement and incorporated by reference job classification descriptions which describe in detail the work tasks covered by the agreement (R. 7). The agreement further provided that "any dispute between the Company and the Union, or between the Company and any employee, concerning the application of this agreement to any particular situation or whether it has been observed or performed" shall be submitted to arbitration (R. 9-14).

In accordance with Section 18.2 of the agreement (R. 11), the I.A.M. on November 7, 1958 filed a grievance alleging that the Company violated Article I of the agreement by assigning work encompassed by the agreement to employees outside the bargaining unit at times when the employees within the bargaining unit were ready, willing and able to perform such work (R. 25). By letter of November 10, 1958, the I.A.M. amended the grievance to include an allegation of violation of Article XIX (Seniority) of the agreement (R. 27). The grievance was processed through the grievance procedure set forth in the agreement and on February 4, 1959, the I.A.M. requested arbitration. This request was later withdrawn by the I.A.M. without prejudice to its right to renew its request in favor of continuing further discussions between the parties (R. 33).

On September 8, 1959, the parties entered into a subsequent collective bargaining agreement to be effective from September 8, 1959 to May 31, 1961 (R. 29). Article I and Article XVIII of the 1956 agreement were carried forward in the new agreement without change (R. 29).

The parties continued their discussions of the grievance and when no agreement was reached, the I.A.M. by letter

dated May 13, 1960 again requested arbitration (R. 31). This request was refused by the Company by letter dated May 26, 1960 (R. 34).

On February 3, 1961, the I.A.M. brought suit to compel arbitration of the grievance (R. 3-6). A petition for leave to intervene by Local No. 1505, International Brotherhood of Electrical Workers, AFL-CIO (hereinafter referred to as "I.B.E.W.") was allowed by the Court on September 29, 1961 (R. 39).

A Motion for Summary Judgment was filed by the I.A.M. (R. 39-40) and thereafter the Company filed a cross-motion for Summary Judgment and a Motion to Dismiss for Lack of Jurisdiction (R. 40). The motions were argued and briefed and on January 24, 1962, the District Court allowed the I.A.M.'s motion and denied the Company's motions (R. 41). The Court held that it had jurisdiction under Section 301(a) to compel arbitration of the grievance and concluded that the decisions of this court relating to the exclusive jurisdiction of the N.L.R.B. were not applicable in the context of this case. Judgment was entered on January 24, 1962 ordering the Company to submit to arbitration the grievance described in the complaint and denying the I.B.E.W.'s request to become a party to said arbitration proceeding (R. 46).

From such order of the District Court, the respondent and the I.B.E.W. appealed to the United States Court of Appeals for the First Circuit (R. 47). That Court, after hearing arguments of counsel, reversed the judgment of the District Court in a written opinion (R. 51), — F.2d —, Appendix "A" herein. The Court below held that it was without jurisdiction to compel arbitration in that the N.L.R.B. had exclusive jurisdiction over this dispute. In so holding, the Court did not disturb the District Court's finding that the grievance presented an arbitrable dispute under the agreement.

Reasons for Granting the Writ

"Since this was a suit for violation of a collective bargaining agreement within the purview of Section 301(a) of the Labor Management Relations Act of 1947, the preemptive doctrine of cases such as *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236 based upon the exclusive jurisdiction of the National Labor Relations Board, is not relevant." *Teamsters Local 174* v. *Lucas Flour Company*, 369 U.S. 95, 101 n. 9 following *Dowd Box* v. *Courtney*, 368 U.S. 502, and in turn followed in *Atkinson* v. *Sinclair Refining Company*, 370 U.S. 238, 248, 245, n. 5.

Nevertheless, the Court below held that suits to enforce an agreement to arbitrate grievances arising out of an asserted violation of the recognition clause of a collective bargaining agreement on the theory that such disputes are within the exclusive jurisdiction of the Board. This decision potentially affects every collective bargaining relationship subject to federal law, for it makes unenforceable contract provisions defining the work tasks covered by the agreement.[1] Such a clause is as indispensable to a collective bargaining agreement as a description of the property to be conveyed is to a deed, since the employees who benefit by the agreement are not identified by name, but in terms of their job titles and duties. See *J. I. Case Co.* v. *N.L.R.B.*, 321 U.S. 332, 334-35. The recognition clause is particularly essential to the union, because it assures that the standards of the agreement will not be undermined by assigning the work tasks defined therein to other employees. Every condition of employment bargained for by the union is meaningless to the extent that the employer is free to have work

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[1] In *Carey* v. *Westinghouse Electric Corporation*, 50 LRRM 2740, July, 1962, the Court of Appeals of New York in a *per curiam* opinion followed the decision below in this case. Judge Fuld filed a dissenting opinion relying on this Court's decisions in the *Steelworkers* arbitration cases, and *Dowd Box Company* and *Lucas Flour Company*.

performed by employees to whom these conditions do not apply. Compare *Local 24, Teamsters Union* v. *Oliver*, 358 U.S. 283. As one arbitrator has said,

> "To allow the Company, after signing an agreement covering standards of wages and conditions . . . to lay off the employees and transfer the work to employees not covered by the agreed standards would subvert the contract and destroy the meaning of the collective bargaining relations." *A. J. Julliard Co.*, 21 L.A. 713, 724, (1953).

The decision below would make such provisions unenforceable judicially. Yet as this Court unanimously held after a full examination of the legislative history, "Congress deliberately chose to leave the enforcement of collective agreements 'to the usual processes of the law' ". *Dowd Box Company* v. *Courtney*, 368 U.S. 502, 513. In *Teamsters Local 174* v. *Lucas Flour Company*, 369 U.S. 95, 101, 129 this Court expressly affirmed and in *Atkinson* v. *Sinclair Refining Company*, 370 U.S. 238, 245, n.5 it reiterated that suits for the enforcement of collective agreements are not subject to the primary jurisdiction of the Labor Board. The Court below in its original opinion cited none of these decisions.

Its denial of rehearing said merely that " * * * we have held that resolution of an ambiguity in [petitioners'] certification is a matter exclusively for the Board in spite of the fact that pre-emption, as such does not apply to actions under Section 301, *Local 174 Teamsters Union* v. *Lucas Flour Company*, * * * ".

The Court's characterization of this suit as one over the scope of the certification is fundamentally erroneous. The Board itself has repeatedly held that a certification is not an award of work:

> "As the Board has heretofore held, and as we reiterate, a Board certification in a representation proceeding is not a jurisdictional award; it is merely a determination that a majority of the employees in an appropriate unit have selected a particular labor organization as their representative for purposes of collective bargaining . . . However, unlike a jurisdictional award, this determination does not freeze the duties or work tasks or the employees in the unit found appropriate. Thus, the Board's unit finding does not *per se* preclude the employer from adding to, or subtracting from, the employees' work assignment." *Employing Plasterers Association of the District of Columbia, Inc.*, 118 N.L.R.B. 17; quoting from *Plumbing Contractors Association of Baltimore, Maryland, Inc.*, 93 N.L.R.B. 1081, and reaffirmed as recently as February 8, 1962, in *Blaw-Knox Co.*, 135 N.L.R.B. No. 89.[2]

The Court's error was due in large part from its rejection of this distinction between questions of representation and disputes over work assignments. The distinction between these concepts—with which the Court was "not im-

[2] In *General Aniline & Film Corporation, Ansco Division*, 89 N.L.R.B. 467, the Board had certified the union for a bargaining unit of all pipe fitters and helpers. The employer and the union subsequently filed a Motion for Interpretation of Board Certification. "Inquiry is made by the Employer and the Petitioner as to whether the Board's Decision and Certification requires that pipefitters and helpers shall perform *all* the work of their classifications, and conversely precludes other employees of the employer from performing *any* of such work. The motion in substance asks whether Board certification amounts to an *award* to employees in the unit found appropriate to perform exclusively all the duties required by their job classifications.

As we have stated before, the Board's only function in a representation proceeding 'is to ascertain the name of the bargaining representative, if any, that has been designated by the employees in the appropriate unit, it is not our function to direct, instruct, or limit that representative as to the manner in which it is to exercise its bargaining agency.'"

pressed"—was made part of the framework of the statute by Congress itself when it provided separate procedures for resolving the two types of controversy. Compare Sections 9(b) and (c) with Sections 10(c) and (k).[2]

The Board cannot clarify a certification in the absence of a prior certification. *Bell Telephone Company of Pennsylvania*, 118 NLRB 371; *American Stores Company*, 130 NLRB 678. Many bargaining representatives, of course, operate without Board certification; see *United Mine Workers* v. *Oak Flooring Company*, 351 U.S. 62. The rationale of the decision below therefore creates the paradox that a non-certified union can obtain judicial enforcement of its recognition clause but a certified union is restricted to the processes of the Board.

Since this case constitutes a dispute over the assignment of work rather than over representation, it is therefore more closely akin to a jurisdictional dispute than to a question over certification. But it is nonetheless not a jurisdictional dispute in the sense of Section 8(b)(4)(D) and Section 303, for, as the Court of Appeals for the Second Circuit recognized in *Local 33 of the International Hod Carriers Union* v. *Mason Tenders District Council*, 291 F.2d 496, 504 (2nd Cir. 1961):

> "It is obvious from reading these sections that this statutory scheme does not purport to give the Board general supervisory powers over controversies between labor organizations relating to work assignments. The Board may act only when a charge has been filed, and

---

[2] Of course, the court below was also in error by asserting that "it is appropriate" that the Labor Board's jurisdiction over jurisdictional disputes "be exclusive." *N.L.R.B.* v. *Radio Engineers*, 364 U.S. 573 expressly held that Congress by allowing private damage suits in Section 303 has removed jurisdictional disputes from the exclusive domain of the Board, 364 U.S. at 584-585 following *Longshoremen's Union* v. *Juneau Spruce Corp.*, 342 U.S. 237.

a mere disagreement over work assignments is not enough to create an unfair labor practice. Before a labor organization can be said to have violated Section 8(b)(4)(D), it must have engaged in one of the activities proscribed in Section 8(b)(4)(i) and (ii).'

* * *

Moreover a reading of Section 10(k) of the National Labor Relations Act, 29 U.S.C.A. Section 160(k), above cited reveals the emphasis which Congress has placed on voluntary adjustment of work assignment disputes and dispels any notion that uniformity of decision is a paramount consideration in this area, for certainly the results reached in voluntary adjustments such as those in arbitration will not always be the same the Board would have reached if it had heard a particular case. We think that to hold that the District Court has no jurisdiction would run counter to the position which Congress has accorded to voluntary adjustments."

Since the I.A.M. has not engaged in the conduct prohibited by Section 8(b)(4)(D), the N.L.R.B. would not have jurisdiction to resolve its claim. The decision of the Court below will contribute to economic conflict since "the denial of arbitration would have the paradoxical result of forcing the Union to engage in conduct prohibited by 8(b)(4)(D) as the only means of obtaining adjudication of its claim to this work." *Carey* v. *General Electric Co.*, F. Supp. , (S.D.N.Y. April 18, 1962); 50 LRRM 2119, 2132.

Moreover, it would require the union to risk a damage suit under Section 303 in order to obtain an adjudication from the Board under the jurisdictional dispute procedures. Indeed, as this Court noted in the *Radio Engineers* case, 364 U.S. 573, the Board has adopted the policy—which we believe is required by the statute—that it will not adjudicate a jurisdictional dispute where a union is entitled to the

work under its collective bargaining agreement. 364 U.S. 573, 577, n. 12.

Properly viewed this litigation involves neither a question of representation nor a jurisdictional dispute. It is essentially a controversy regarding the meaning of a contract, more particularly as to the contractual obligation of Raytheon to assign work encompassed by the agreement to the employee-members of the petitioner.[4] The question is the same whether the work which the union claims under its agreement is assigned to other employees as here or is contracted to another employer for processing by the latter's employees, as in the typical subcontracting situation. In *Steelworkers* v. *Warrior & Gulf Co.*, 363 U.S. 574 this Court observed that the latter disputes are "grist in the mills of the arbitrators". This case is nothing more or less than a suit to enforce arbitration of a grievance which is indistinguishable from that in *Warrior & Gulf* in its practical effect on the preservation of work standards for which the union had bargained.

The District Court held that the grievance was subject to arbitration in accordance with the principles announced by this Court. The Court below did not disturb this finding. Accordingly, "arbitration should have been ordered." *Steelworkers* v. *American Manufacturing Company*, 363 U.S. 564, 573. To compel this employer to live up to his

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[4] See *Continental Can Co.*, 37 L.A. 738, 740 (1961) where the arbitrator said:

> "What seems to be involved here is whether, taking the contract as we find it between the Company and the Grievant Local Union, the Company has wrongfully allocated the work to others than the grievants. This not being a matter of defining a bargaining unit, *per se*, it looms simply as a question of whether or not the Company violated the Grievants' agreement. In Labor Arbitration Reports 24.57 there are a great many decisions of arbitrators in this sphere, and they do not find that there is any transgression of N.L.R.B. territory. It is simply a matter of interpreting the contract between the parties before the Arbitrator, and as such, this Arbitrator must confront that issue."

commitment to arbitrate would in no way interfere with the orderly processes of the Board. See Fuld, J. dissenting in *Carey* v. *Westinghouse Electric Corporation*, N.Y. Ct. Appeals, July 1962; 50 LRRM, 2740 at 2742. The views of the Court below that the submission of this dispute to the arbitrator—as the parties had agreed—would create a conflict with the Board arose from the Court's misunderstanding of the nature of the suit. In any event, this Court has made crystal clear that the possibility of such a conflict provides no basis for the federal district courts to deny a party the judicial remedy which Congress provided in Section 301.

Conclusion

It is respectfully submitted that, for the reasons above stated, this Petition for a Writ of Certiorari should be granted.

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Appendix "A"

United States Court of Appeals
For the First Circuit

No. 5975.

LOCAL NO. 1505 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO,

INTERVENOR, APPELLANT,

v.

LOCAL LODGE NO. 1836 OF DISTRICT 38 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, ET AL.,

APPELLEES;

No. 5976.

RAYTHEON COMPANY,

DEFENDANT, APPELLANT,

v.

SAME.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

Before HARTIGAN and ALDRICH, *Circuit Judges*, and WYZANSKI, *District Judge*.

Donald Stahl, with whom *Timothy J. Murphy* was on brief, for Local No. 1505 International Brotherhood of Electrical Workers, AFL-CIO.

Paul F. Hannah and *Robert L. Molinar* for Raytheon Company.

Arthur J. Flamm, with whom *Segal & Flamm* was on brief, for Local Lodge No. 1836 of District 38 of the International Association of Machinists, AFL-CIO.

OPINION OF THE COURT.

June 4, 1962

ALDRICH, *Circuit Judge*. This is an action to compel arbitration. In 1946 Local No. 1505, International Brotherhood of Electrical Workers, AFL-CIO (IBEW), was certified as the bargaining representative for all production and maintenance employees at certain plants operated in Massachusetts by Raytheon Manufacturing Company, now Raytheon Company. In 1952 Local Lodge No. 1836 of District 38 of the International Association of Machinists, AFL-CIO (IAM), was certified as representatives for certain machinists theretofore included in the IBEW bargaining unit. Both unions since certification have maintained collective bargaining agreements with Raytheon. IAM's contains extensive provisions for arbitration.[1] The record does not show, but it was asserted during argument and not contradicted, that IBEW's does also. In 1958 IAM demanded that certain work hitherto performed by members of IBEW be taken away and assigned to IAM members. Raytheon declined and, following unsuccessful grievance procedure, IAM requested arbitration. Upon the rejection of that request IAM brought the present action against Raytheon. The court permitted IBEW to intervene. However, upon cross motions for summary judgment the court thereafter ordered bilateral arbitration, denying IBEW's request to participate. Raytheon and IBEW appeal.

We consider first IBEW's claim. Concededly, even if it has an agreement to arbitrate, it is not an agreement to arbitrate with IAM. During oral argument we asked IAM how, nevertheless, it could be injured by tripartite arbitration. Counsel admitted he could think of no harm, but insisted that arbitration is purely a matter of contract and

[1] These provisions do not in specific terms cover the present situation, and Raytheon points to other provisions which it says preclude arbitration. We do not reach this issue.

that it has a contractual right to arbitrate with Raytheon alone. In view of the factual situation this obviously would not make arbitration a true instrument for industrial peace. However, we need not consider whether, regardless of IAM's contentions, we have authority to adopt equitable measures, because we think there is another solution to the difficulties it insists upon creating or, at least, insists on not avoiding. We believe that exclusive jurisdiction to resolve the conflict between the parties is in the Labor Board whose certifications have permitted these overlapping claims.[2]

It is true that no unfair labor practice may have been committed. *Cf. Tacoma Printing Pressmen's Union*, 1961, 131 N.L.R.B. 1090. Even had there been, this might not pre-empt the district court's jurisdiction under 29 U.S.C. §301. *Cf. United Steelworkers of America* v. *New Park Mining Co.*, 10 Cir., 1959, 273 F.2d 352; *Independent Petroleum Workers* v. *Esso Standard Oil Co.*, 3 Cir., 1956, 235 F.2d 401. See also Meltzer, The Supreme Court, Congress, and State Jurisdiction Over Labor Relations: II, 59 Colum. L. Rev. 269, 282 (1959). But we cannot agree with IAM's contention that the issue does not involve a matter of representation. Its basic demand was predicated upon the company's alleged violation of the recognition clause. IAM protests that it is not seeking to represent other employees; it merely wishes their work. We are not impressed by this distinction. Certification and representation are both bottomed on work categories. On the facts here alleged a decision by the arbitrator in IAM's favor, if erroneous, would invade IBEW's certification. Arbitration, by IAM's

[2] As is customary in actions to compel arbitration IAM does not submit the merits of the controversy to the court, but says that this is an issue for the arbitrator. We need not consider how we would decide if IAM showed that its certification was so unambiguous that there was nothing for the Board to resolve.

own admission, is but a matter of contract. A union by contract with an employer cannot define the scope of its certification; that is the Board's function.[3] Not only has the Board in the past made necessary clarifications, *St. Regis Paper Co.*, 1961, 130 N.L.R.B. 1235, but jurisdictional disputes between unions are precisely its province. *NLRB v. Radio & Television Broadcast Engineers Union*, 1961, 364 U.S. 573. It is appropriate that this jurisdiction be exclusive. See Meltzer, *op. cit. supra*, at 299. The case relied upon by the court below, *Local 33, International Hod Carriers Union v. Mason Tenders District Council*, 2 Cir., 1961, 291 F.2d 496, involved an intra-union dispute between two locals of no possible Board concern, and is inapposite for reasons stated in the opinion. See 291 F.2d at 503.

Judgment will be entered reversing the judgment of the District Court and ordering the complaint dismissed.

OPINION OF THE COURT.

On Petition for Rehearing or to Amend Order.

July 19, 1962.

Aldrich, *Circuit Judge*. We write this opinion on IAM's petition for rehearing not because any opinion is required, but to record our special objections to the petition. The bar should understand that such petitions are to be filed only in unusual circumstances. In the absence of clear error they are not to be used to reargue matters already argued and determined. Conversely, they are not for the

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[3] As the court said in this respect in *Portland Web Pressmen's Union v. Oregonian Publishing Co.*, 9 Cir., 1960, 286 F.2d 4, 9, *cert. den.* 366 U.S. 912, "the parties could not by private agreement take away from the Board the right to make those determinations." See also *International Chemical Workers Union v. Olin Mathieson Chemical Corp.*, D.C.S.D. Ill., 1962, 202 F.Supp. 363, 365; *International Union of Doll & Toy Workers v. Metal Polishers Union*, D.C.S.D. Cal., 1960, 180 F.Supp. 280.

purpose of presenting matters which should have been but, without good cause, were not argued before, *Carl* v. *FTC*, 1 Cir., 1962, 302 F.2d 688, 691, and particularly they are not, as here, to be used to introduce a record which was not even presented below.

Although Raytheon and IBEW argued fully the jurisdictional issue upon which we subsequently rested our decision, IAM now seeks for the first time to call to our attention certain proceedings occurring before the Board in 1953 which it says are pertinent to this issue. As presently recited the extent of this pertinency is not fully clear. In the absence of palpable error, and because of manifest untimeliness, we will not consider them.

Secondly, although IAM appears to recognize that we have held that resolution of an amibiguity in its certification is a matter exclusively for the Board in spite of the fact that pre-emption, as such, does not apply to actions under section 301, *Local 174, Teamsters Union* v. *Lucas Flour Co.*, 1962, 369 U.S. 95, 101 fn. 9, in the same breath it asks us, to save expense, to amend our mandate to order the district court to retain jurisdiction "in the event the Board should hold that it has no jurisdiction over this dispute." The only circumstance we can presently think of under which the Board might be said to lack "jurisdiction" would be if no ambiguity exists, a matter we have previously adverted to, fn. 2, *supra*. Such a contention would be inconsistent with IAM's position hitherto, and it is too late to advance it now.

The petition for rehearing is denied.

Appendix "B"

STATUTORY PROVISIONS INVOLVED

SEC. 8

(b) It shall be unfair labor practice for a labor organization or its agents—

(4)(i) to engage in; or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work:

SEC. 9.

(c)(1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9(a), or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9(a); or

(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9(a);

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

SEC. 10.

(k) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(D) of section 8(b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless,

within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

SEC. 301.

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer whose activities affect commerce as defined in this Act shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

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Supreme Court of the United States.

OCTOBER TERM, 1962.

No. 419.

LOCAL LODGE NO. 1836 OF DISTRICT 38 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, ET AL.,
Petitioners,

v.

LOCAL NO. 1505 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO AND RAYTHEON COMPANY,
Respondents.

BRIEF OF RAYTHEON COMPANY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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Respondents.

BRIEF OF RAYTHEON COMPANY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Question Presented.

Does the National Labor Relations Board, as was decided below, have exclusive jurisdiction over the jurisdictional dispute involved in this case arising from claims by one certified union that employees represented by it shall perform work hitherto performed by employees of the employer represented by another certified union?

Statement of Case.

The statement at pages 2-4 of the petition as to the proceedings below are substantially accurate. A number of

years prior to the commencement of these proceedings, in 1946, IBEW was certified after an election by the National Labor Relations Board as collective bargaining agent for all of Raytheon's production and maintenance employees in the Boston, Massachusetts, area (Opinion below, *Raytheon Co.* v. *Local Lodge No. 1836*, 304 F. 2d 365, 366). In 1952 a unit of tool and die makers and machinists was carved out of the earlier unit by the National Labor Relations Board and petitioner was certified as the representative of the employees in words practically identical with the language of the recognition clause of petitioner's contract with Raytheon (Opinion below, *Raytheon Co.* v. *Local Lodge No. 1836*, 304 F. 2d 365, 366). In 1958 petitioner claimed for the employees it represents certain work performed by members of the IBEW. Raytheon refused such claims; and IAM, after unsuccessful grievance procedures, requested arbitration. After Raytheon's refusal on the ground that arbitration was not obligatory, the proceedings below were brought.

No further elaboration on the Statement of the Case made by petitioner is required except to point out that the Court of Appeals did not reach, and therefore did not pass on, the contentions of Raytheon, first, that the claims of petitioner were not arbitrable under the collective bargaining agreement between them, and, secondly, that, even if arbitrable, the Court should make IBEW, whose members were doing the claimed work, a party to the arbitration.

Reasons for Denying the Writ.

The decision of the Court of Appeals creates no conflict among the Circuit Courts, or with the decisions of this Court. The Federal question presented does not have that

degree of importance or immediacy which requires this Court now either to approve or to reverse the answer of the Court of Appeals without waiting to see how, in practice, that answer will promote the national policy in favor of final and binding settlement of labor disputes.

Petitioner cites no Court of Appeals holding in conflict with the decision review of which is sought.

The magnification by petitioner of footnote 9 in an inapposite case (*Local 174, Teamsters &c. of America* v. *Lucas Flour Company* (1962), 369 U.S. 95) into the *ratio decidendi* does not establish a conflict with the decisions of this Court.

Lucas Flour involved a suit by an employer against a union for damages caused by a strike called in protest over the discharge of an employee during the period when a collective bargaining agreement was in effect providing for final and binding arbitration of grievances. The suit was brought in the Washington state courts. The Supreme Court of Washington affirmed a lower court's award of damages and held that the Washington state courts had jurisdiction to entertain the suit and to apply local rather than Federal law. In affirming the judgment, this Court held that state courts have concurrent jurisdiction with Federal courts over Section 301 suits, but that the law to be applied was Federal not state law. However, since applicable Federal law was not in conflict with the local law applied by the Supreme Court of Washington, the judgment was affirmed.

The facts in *Lucas Flour* therefore demonstrate that the matter was not even arguably within the protections of Section 7 or the prohibitions of Section 8 of the National Labor Relations Act within the rationale of *San Diego Building Trades Council* v. *Garmon* (1959), 359 U.S. 236. The decision in that case has no bearing upon the issue below of whether an arbitrator or the National Labor Re-

lations Board is to determine jurisdictional disputes arising from the Board's certifications.

Similarly, the facts in *Dowd Box Co.* v. *Courtney* (1962), 368 U.S. 502, and *Atkinson* v. *Sinclair Refining Co.* (1962), 370 U.S. 238, cited by petitioner, demonstrate that the language used by this Court in those cases is not relevant to the situation here. *Dowd Box* settled the issue that the Federal courts were not given exclusive jurisdiction to enforce collective bargaining agreements. *Atkinson* v. *Sinclair Refining Co.* ruled that a Federal court may hear the merits of a damage action for a strike where the employer had not agreed to submit employer grievances to arbitration.

Petitioner, the certified collective bargaining agent representing one group of Raytheon's employees, sought to obtain, through its Section 301 suit below, work currently assigned to employees represented by another certified collective bargaining agent. It wanted judicial help to compel an arbitration of a jurisdictional dispute between it and the IBEW, to which arbitration IBEW, whose members now have the work, would not be a party and in which it would be voiceless. If the Court had ordered arbitration and the arbitrator ordered the work reassigned, he could order all work reassigned, destroying collective bargaining relations and reducing to a hollow shell the Board certification of IBEW.

As the Court of Appeals pointed out, IAM's "basic demand was predicated upon the company's alleged violation of the recognition clause," which speaks in the language of the NLRB certification. A decision by the arbitrator in IAM's favor, "if erroneous, would invade IBEW's certification. Arbitration, by IAM's own admission, is but a matter of contract. A union by contract with an employer cannot define the scope of its certification; that is the

Board's function" (Opinion below, *Raytheon Co.* v. *Local Lodge No. 1836*, 304 F. 2d, at 367.)

The decisions of this Court cited by petitioner are not in conflict with the ruling below. On the contrary, the way to the Court of Appeals decision has been so clearly pointed to by this Court that it cannot be said that the Federal question it answered should now be settled by this Court.

It cannot be gainsaid that a single tribunal—the one that had initially worked out the boundaries of each union, and the one which this Court had said has as its province the settlement of jurisdictional disputes (*NLRB* v. *Radio & Television Broadcast Engineers Union, etc.* (1961), 364 U.S. 573)—would be successful in promoting the Federal policy in favor of final and binding settlement of labor disputes enunciated in *Textile Workers Union of America* v. *Lincoln Mills of Alabama* (1957), 353 U.S. 448, and *Radio and Television Broadcast Engineers, supra*, whereas a variety of arbitrators hearing only one of the certified unions involved in jurisdictional disputes could not but fail. It cannot be argued that the Board is any less capable of honoring the recognition clause of a collective bargaining agreement than would be a Federal or state court or an arbitrator.

This Court has not hesitated to declare exclusive jurisdiction in the National Labor Relations Board when it thought the national labor policy laid down by Congress would be thereby promoted. *Bethlehem Steel Co.* v. *New York State Labor Relations Board* (1947), 330 U.S. 767; *San Diego Building Trades Council* v. *Garmon* (1959), 359 U.S. 236. The unifying consideration of its decisions—and the apparent basis for the decision below—

> ". . . has been regard to the fact that Congress has entrusted administration of the labor policy for the Nation to a centralized administrative agency, armed

with its own procedures, and equipped with its specialized knowledge and cumulative experience."

San Diego Building Trades Council v. *Garmon*, 359 U.S. 236, 242.

In *Garner* v. *Teamsters, Chauffeurs & Helpers, etc.* (1953), 346 U.S. 485, 490-491, this Court declared:

> "Congress did not merely lay down a substantive rule of law to be enforced by any tribunal competent to apply law generally to the parties. It went on to confide primary interpretation and application of its rules to a specific and specially constituted tribunal and prescribed a particular procedure for investigation, complaint and notice, and hearing and decision, including judicial relief pending a final administrative order. Congress evidently considered that centralized administration of specially designed procedures was necessary to obtain uniform application of its substantive rules and to avoid these diversities and conflicts likely to result from a variety of local procedures and attitudes toward labor controversies. . . . A multiplicity of tribunals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudications as are different rules of substantive law. . . ."

Even had the question of Federal law here involved the importance ascribed to it by petitioner, it would be premature for this Court to review it at this time.

Following the directive given by this Court in *Lincoln Mills, supra*, to fashion remedies in Section 301 suits that will effectuate the policy of our national labor laws, the Court of Appeals selected, as the most appropriate agency

to bring about peaceful disposition of the jurisdictional dispute here present, the Board which had in the first instance staked out the territories of the two disputants. Such a reference appears to be most sensible, and best designed to promote labor peace; certainly it would seem far better to serve the national labor policy than a reference to arbitration between Raytheon and petitioner of this dispute, which is basically between petitioner and IBEW. The decision furnishes an opportunity to this Court, without having committed itself, to determine, after experience, the wisdom of the conclusion of the Court of Appeals and to observe, while it still may apply a corrective, the effects on industrial peace. The more important the question is deemed to be, the more vital does it become to hammer out the answer on the anvil of experience. It is urged that the Court follow this course, and deny the petition.

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Office-Supreme Court, U.S.
FILED
JAN 16 1963
JOHN F. DAVIS, CLERK

In the

Supreme Court of the United States

OCTOBER TERM, 1962

No. 419

LOCAL LODGE NO. 1836 OF DISTRICT 38 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, ET AL.,

PETITIONERS,

v.

LOCAL NO. 1505 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, ET AL.,

RESPONDENT.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR PETITIONER LOCAL LODGE NO. 1836 OF DISTRICT 38 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO

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Standard-Coosa-Thatcher Co., 30 LA 710 (1958) 8
Stewart Warner Corp., 22 LA 457 (1954) 8
Wheeling Steel Corp., 21 LA 35 (1953) 8

In the
Supreme Court of the United States

OCTOBER TERM, 1962

No. 419

LOCAL LODGE NO. 1836 OF DISTRICT 38 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, ET AL.,

PETITIONERS,

v.

LOCAL NO. 1505 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, ET AL.,

RESPONDENT.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR PETITIONER LOCAL LODGE NO. 1836 OF DISTRICT 38 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO

Opinions Below

The opinion of the Court of Appeals for the First Circuit is reported at 304 F.2d 360 (R. 76-78). The opinion of the Court denying the petition for rehearing is reported at 304 F.2d 367 (R. 87-88). The opinion of the District Court is reported at 201 F. Supp. 334 (R. 67-71).

Jurisdiction

The judgment of the Court of Appeals was entered on June 4, 1962 (R. 78). A petition for rehearing was denied on July 19, 1962 (R. 89). The petition for a writ of certiorari was filed on September 6, 1962 and granted on November 19, 1962, 83 Sup. Ct. 255 (R. 89).

Question Presented

Does the District Court have jurisdiction under Section 301 of the Labor-Management Relations Act to compel arbitration of a grievance alleging that the employer violated the agreement by assigning work covered by the agreement to employees outside the bargaining unit?

Statute Involved

The case involves Sections 8(b)(4)(i) and (ii), Section 9(e)(1)(A), 9(e)(1)(B), 10(k), and Section 301 (a) and (b) of the National Labor Relations Act as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*), which are printed as Appendix "A" to the brief.

Statement

This suit is brought under Section 301 of the Labor-Management Relations Act, 1947, 29 U.S.C.A., Section 185, to compel arbitration pursuant to the terms of a collective bargaining contract.

On August 8, 1956, the respondent (hereinafter referred to as the "Company") and the petitioner (hereinafter referred to as the "I.A.M.") entered into a collective bargaining agreement (R. 7). Article I of said agreement set forth the job classifications covered by the agreement and

incorporated by reference job classification descriptions which describe in detail the work tasks covered by the agreement (R. 7). The agreement further provided that "any dispute between the Company and the Union, or between the Company and any employee, concerning the application of this agreement to any particular situation or whether it has been observed or performed" shall be submitted to arbitration (R. 9-13).

In accordance with Section 18.2 of the agreement (R. 11), the I.A.M. on November 7, 1958 filed a grievance alleging that the Company violated Article I of the agreement by assigning work encompassed by the agreement to employees outside the bargaining unit at times when the employees within the bargaining unit were ready, willing and able to perform such work (R. 23). By letter of November 10, 1958, the I.A.M. amended the grievance to include an allegation of violation of Article XIX (Seniority) of the agreement (R. 56). The grievance was processed through the grievance procedure set forth in the agreement and on February 4, 1959, the I.A.M. requested arbitration. This request was later withdrawn by the I.A.M. without prejudice to its right to renew its request in favor of continuing further discussions between the parties.

On September 8, 1959, the parties entered into a subsequent collective bargaining agreement to be effective from September 8, 1959 to May 31, 1961 (R. 57). Article I and Article XVIII of the 1956 agreement were carried forward in the new agreement without material change.

The parties continued their discussions of the grievance and when no agreement was reached, the I.A.M. again requested arbitration (R. 58). This request was refused by the Company (R. 61).

On February 3, 1961, the I.A.M. brought suit to compel arbitration of the grievance (R. 4-7). A petition for leave to intervene by Local No. 1305, International Brotherhood

of Electrical Workers, AFL-CIO (hereinafter referred to as "I.B.E.W.") was allowed by the court (R. 65).

A Motion for Summary Judgment was filed by the I.A.M. and thereafter the Company filed a cross-motion for Summary Judgment and a Motion to Dismiss for Lack of Jurisdiction (R. 66). The District Court allowed the I.A.M.'s motion and denied the Company's motions (R. 67). The court held that the grievance presented an arbitrable dispute under the agreement and that it had jurisdiction under Section 301 to compel arbitration. The court rejected the application of the preemption doctrine as not being applicable in the context of this case. The court also concluded that the I.B.E.W. had no right to intervene in an arbitration proceeding held under an agreement between Raytheon and I.A.M. To permit such intervention, the court held, would constitute an amendment to the agreement and impose new obligations upon the parties which had not been contracted for. Judgment was entered on January 24, 1962 ordering the Company to submit to arbitration the grievance described in the complaint and denying the I.B.E.W.'s request to become a party to said arbitration proceeding (R. 71).

From such order of the District Court, the Company and the I.B.E.W. appealed to the United States Court of Appeals for the First Circuit (R. 72). That court reversed the judgment of the District Court in a written opinion (R. 25), 304 F.2d 365. The court below held that it was without jurisdiction to compel arbitration in that the N.L.R.B. had exclusive jurisdiction over this dispute.

Summary of Argument

1. This is a suit brought under Section 301 to enforce an agreement to arbitrate. The issue sought to be arbitrated is whether the Company violated the agreement by assign-

ing work covered by the agreement to employees outside the bargaining unit at times when employees in the unit were available to do such work. The decision of the court below is in conflict with the decisions of this Court holding that the preemption doctrine is not applicable to suits brought under Section 301.

2. The court below was in error in characterizing this suit as one involving a question of representation to be resolved by the Board through a clarification of its certification. A certification is only a determination that a majority of employees in a designated unit have selected a particular labor organization as their bargaining representative. It is not an award of work and it is left to the parties in collective bargaining to spell out the work to be covered by the agreement. A work jurisdiction clause is of vital importance for it assures that the standards of the agreement will not be undermined by the assigning of such work to others outside the coverage of the agreement.

3. Since the I.A.M. has not committed any unfair labor practices, the Board does not have jurisdiction to hear and determine this matter under the jurisdictional dispute sections of the Act. The I.A.M. would be compelled to engage in conduct prohibited by the Act in order to obtain an adjudication by the Board under the jurisdictional dispute procedures.

4. The need for uniformity and the avoidance of conflicts in the decision-making process which underlie the preemption doctrine is not present in work assignment disputes. Even where a jurisdictional dispute exists within the meaning of the Act, the procedures provided in Section 10(k) emphasize voluntary means of resolving such disputes.

Argument

I. This Is a Suit to Compel Arbitration Pursuant to the Terms of a Collective Bargaining Agreement.

This is a suit brought under Section 301 to enforce an agreement to arbitrate. The issue sought to be arbitrated is whether the Company violated the agreement by assigning work embodied in the agreement to employees outside the bargaining unit at times when employees in the unit were available to do such work (R. 23-24). Since the agreement contains a standard arbitration clause requiring all disputes concerning the application of the agreement to be arbitrated (R. 9-13), the grievance is clearly arbitrable under the principles announced by this Court in the *Steelworkers* cases.[1] The court below concluded that it was compelled to depart from the announced federal policy of enforcing arbitration agreements because "exclusive jurisdiction to resolve the conflict between the parties is in the Labor Board. . ." In so holding, the court did not attempt to reconcile its conclusion with the statements of this Court that the doctrine of preemption announced in *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236 and related cases is inapplicable to suits to enforce collective bargaining agreements and that Congress "deliberately chose to leave the enforcement of collective agreements 'to the usual processes of the law' ". *Dowd Box Company* v. *Courtney*, 368 U.S. 502, 513; *Local 174, Teamsters* v. *Lucas Flour Company*, 369 U.S. 95, 101, n.9; *Atkinson* v. *Sinclair Refining Co.*, 370 U.S. 238, 245, n.5; *Smith* v. *Evening News Association*, 31 U.S. L. Week 4041, (U.S. December 10, 1962).

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[1] *United Steelworkers of America* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574; *United Steelworkers of America* v. *American Manufacturing Co.*, 363 U.S. 564; *United Steelworkers of America* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593.

The I.A.M. is certified as the exclusive bargaining representative for the Company's employees classified as: "Experimental and Development Machinists A, B and C; Machinists A, B and C; Maintenance Machinists; Die Makers A, B and C" (R. 7). The certification does not describe the work tasks to be performed by the employees in these classifications nor does it preclude the employer from altering work assignments (*infra*, II). The task of defining the work covered by the agreement is for the parties in collective bargaining. The definition of the work to which the terms and conditions of the agreement are applicable is of particular significance for it assures that the standards of the agreement will not be undermined by assigning such work to others outside the coverage of the agreement. Every condition of employment bargained for by the union is meaningless to the extent that the employer is free to have such work performed by employees to whom these conditions do not apply.[2] Compare *Local 24, Teamsters Union* v. *Oliver*, 358 U.S. 283. The unit represented by the I.A.M. consists of highly skilled and relatively highly paid craftsmen. The employer may well desire to have its work done by semi-skilled operators rather than craftsmen. We fully concede the right of the employer to make that kind of judgment. But unions have a correlative right under collective bargaining to seek to incorporate into collective bargaining agreements provisions that will afford protection against the destruction of their jobs. The employer's interest in getting the work done for the cheapest wage is counter-balanced by the employees' desire that they retain their jobs and the standards of employment. The conflict

[2] As one arbitrator has said, "To allow the Company, after signing an agreement covering standards of wages and conditions . . ., to lay off the employees and transfer the work to employees not covered by the agreed standards would subvert the contract and destroy the meaning of the collective bargaining relations." *A. J. Juilliard Co.*, 21 L.A. 713, 724, (1953).

of economic interest in this area may become even more pronounced during periods of rapid technological change. This issue deals with a "condition of employment" and thus, is a proper subject of bargaining under 8(d) and 9(a). *Town & Country Mfg.*, 136 NLRB No. 111; *cf. Telegraphers* v. *Chicago & N.W.R. Co.*, 362 U.S. 330.[3] I.A.M. and Raytheon have incorporated into their agreement the job descriptions which define in great detail the work covered by the agreement (R. 25-55). It is our contention that the Company violated the agreement when it assigned such work to employees outside the bargaining unit at times when employees in the unit were available. Whether we are correct in this contention is of course a question for the arbitrator and not the courts. *Steelworkers* v. *Warrior & Gulf Co.*, 363 U.S. 574. All that we are seeking in this proceeding is to compel the Company to submit this dispute to arbitration in accordance with its agreement. *cf. United Steelworkers* v. *New Park Mining Co.*, 273 F.2d 352 (10th Cir. 1959).

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[3] There is no practical difference from the standpoint of preserving work standards and enforcing an agreement whether the work which the union claims under its agreement is assigned to other employees or is contracted to another employer for processing by the latter's employees as in the typical subcontracting situation. In *Steelworkers* v. *Warrior & Gulf Co.*, 363 U.S. 574, 584, this Court observed that the latter disputes are "grist in the mills of the arbitrators". A similar observation could be made with respect to work assignment disputes. *Allegheny Ludlum Steel Corp.*, 39 LA 190 (1962); *Continental Can Co.*, 37 LA 738 (1961); *Collins Radio Co.*, 36 LA 815 (1961); *Houdaille Industries Inc.*, 35 LA 455 (1960); *General Motors Corp.*, 37 LA 193 (1961); *National Lead Co.*, 36 LA 963 (1961); *Rayonier, Inc.*, 36 LA 883 (1961); *Continental Oil Co.*, 32 LA 668 (1959); *Standard-Coosa-Thatcher Co.*, 30 LA 710 (1958); *Chesapeake & Ohio R. Co.*, 29 LA 381 (1957); *Hamm Brewing Co.*, 28 LA 46 (1957); *Great Lakes Pipe Line Co.*, 27 LA 748 (1956); *Reynolds Metals Co.*, 26 LA 756 (1956); *Colorado Fuel & Iron Corp.*, 25 LA 230 (1955); *Bridgeport Brass Co.*, 25 LA 151 (1955); *Celotex Corp.*, 24 LA 369 (1955); *Haddon Craftsmen Inc.*, 23 LA 210 (1954); *Stewart Warner Corp.*, 22 LA 547 (1954); *Wheeling Steel Corp.*, 21 LA 35 (1953).

II. The Dispute Between the Parties Does Not Involve Either a Question of Representation or a Jurisdictional Dispute Within the Meaning of the Act.

The Circuit Court's characterization of this suit as one involving a question of representation is fundamentally erroneous. The Board itself has repeatedly held that a certification is not an award of work but only a determination that a majority of employees in a designated unit have selected a particular labor organization as their representative for purposes of collective bargaining.[4] *General Aniline & Film Corp.*, 89 NLRB 467; *Plumbing Contractors Association*, 93 NLRB 1081; *Employing Plasterers Association*, 118 NLRB 17. Any questions concerning work assignments are left to the parties to resolve through collective bargaining and in the administration of their agreements. *McDonnell Aircraft Corp.*, 109 NLRB 930; *New Gravure Printing Company*, 136 NLRB No. 127. *cf. Smith* v. *Evening News Association*, 31 U.S. L. Week 4041, n. 6, (U.S. December 10, 1962). *Hercules Motor Corp.*, 136 NLRB No. 145; *International Harvester Co.*, 138 NLRB No. 88. Thus the Board, to which the court below would give exclusive jurisdiction over this grievance as a representation matter, has specifically held that it should be viewed as a contract dispute to be resolved through the grievance and arbitration procedure.

The Board's procedures are not the exclusive means available for the determination of bargaining representatives. An employer and a union may resolve disputes

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[4] The Court's error was due in large part from its rejection of the distinction between questions of representation and disputes over work assignments. The distinction between these concepts—with which the Court was "not impressed"—was made part of the framework of the statute by Congress itself when it provided separate procedures for resolving the two types of controversy. Compare Sections 9(b) and (c) with Sections 10(c) and (k).

over representation through privately agreed means and many unions operate without Board certification. *United Mine Workers* v. *Arkansas Oak Flooring Co.*, 351 U.S. 62. Even if we assume an implied authority in the Board to clarify a certification, it cannot act in the absence of a prior certification.[5] Therefore, the rationale of the decision below creates the paradox that a non-certified union can obtain judicial enforcement of its recognition clause but a certified union is restricted to the processes of the Board.

Since this case involves a dispute over the assignment of work rather than representation, it is more closely akin to a jurisdictional dispute. But it is nonetheless not a jurisdictional dispute in the sense of Section 8(b) (4) (D) and Section 303, for as the Court of Appeals for the Second Circuit noted in *Local 35 of the International Hod Carriers Union* v. *Mason Tenders District Council*, 291 F.2d 496, 504 (2nd Cir. 1961):

> "It is obvious from reading these sections that this statutory scheme does not purport to give the Board general supervisory powers over controversies between labor organizations relating to work assignments. The Board may act only when a charge has been filed, and a mere disagreement over work assignments is not enough to create an unfair labor practice. Before a labor organization can be said to have violated Section 8(b) (4) (D), it must have engaged in one of the activities proscribed in Section 8(b) (4) (i) and (ii)."

The I.A.M. has not engaged in any conduct which falls within Section 8(b) (4) (i) or (ii). Consequently, the decision of the court below will contribute to economic conflict since "the denial of arbitration would have the

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[5] *Bell Telephone Company of Pennsylvania*, 118 NLRB 371; *American Stores Company*, 130 NLRB 678.

paradoxical result of forcing the Union to engage in conduct prohibited by 8(b) (4) (D) as the only means of obtaining adjudication of its claim to this work." *Carey v. General Electric Co.*, 50 LRRM 2119, 2132, (S.D.N.Y. April 18, 1962) Moreover, it would require the union to risk a damage suit under Section 303 in order to obtain an adjudication from the Board under the jurisdictional dispute procedures.[6]

The line that Congress has drawn with respect to jurisdictional disputes is quite definite. The Board is empowered to intervene and resolve jurisdictional disputes only after a party has engaged in one of the activities proscribed in Section 8(b) (4) (i) and (ii).[7] Absent such conduct, the Board is without jurisdiction and the parties are left to their own devices. Moreover, even where a jurisdictional dispute within the meaning of Section 8(b) (4) (D) exists, the procedures provided in Section 10(k) emphasize voluntary means of resolving such disputes. The Board only determines the dispute after the parties have failed to agree upon a means of settling their differences. In arriving at a determination, the Board decides each case on its own facts, and considers may factors including arbitrators awards and the terms of agreements.[8] *NLRB* v. *Radio*

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[6] There is no assurance of a Board adjudication since the employer could seek damages under Section 303 but refrain from filing charges with the Board. There is also the possibility of conflicting decisions between the Board and the courts and thus the union might secure a favorable adjudication of its claim by the Board but be held liable for damages by the court.

[7] Of course, the court below was also in error by asserting that "it is appropriate" that the Labor Board's jurisdiction over jurisdictional disputes "be exclusive." *N.L.R.B.* v. *Radio Engineers*, 364 U.S. 573 expressly held that Congress by allowing private damage suits in Section 303 has removed jurisdictional disputes from the exclusive domain of the Board, 364 U.S. at 584-585 following *Longshoremen's Union* v. *Juneau Spruce Corp.*, 342 U.S. 237.

[8] It would be anomalous to refuse to enforce an agreement to arbitrate work assignment disputes out of deference to the Board's expertise, while the Board is required to look to the opinions of arbitrators to find guidance in resolving such disputes.

and Television Broadcast Engineers, 364 U.S. 573; *J.A. Jones Construction Co.*, 135 NLRB No. 139.

The need for uniformity and the avoidance of conflicts in the decision-making process underlie the preemption doctrine of the *Garner*[9] case. In *Dowd Box, Lucas Flour, Sinclair Refining* and *Evening News*, this Court held that these considerations are not applicable to suits to enforce agreements.

> "The fact that the two forums may disagree is not to be accepted as an argument for their not pursuing their separate courses. If it were, the Court would not have rejected the 'preemption' doctrine. The possibility of conflicting remedies is the very heart of the doctrine of the Garmon case which the Court holds is inapplicable to contract disputes." *Procter & Gamble Independent Union* v. *Procter & Gamble*, 51 LRRM 2752, 2757 (2nd Cir., December 10, 1962)

There is no sound or compelling reason to depart from these principles in a suit to enforce an agreement to arbitrate a work assignment dispute. To the contrary, even where a jurisdictional dispute exists, the Act encourages the parties to resolve their differences through private means.[10]

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[9] *Garner* v. *Teamsters*, 846 U.S. 485.

[10] "Moreover a reading of Section 10(k) of the National Labor Relations Act, 29 U.S.C.A. Section 160(k), above cited reveals the emphasis which Congress has placed on voluntary adjustment of work assignment disputes and dispels any notion that uniformity of decision is a paramount consideration in this area, for certainly the results reached in voluntary adjustments such as those in arbitration will not always be the same the Board would have reached if it had heard a particular case. We think that to hold that the District Court has no jurisdiction would run counter to the position which Congress has accorded to voluntary adjustments." *Local 33 of the International Hod Carriers Union* v. *Mason Tenders District Council*, 291 F.2d 496, 504 (2nd Cir. 1961).

Conclusion

This litigation involves neither a question of representation nor a jurisdictional dispute. It is essentially a controversy regarding the meaning of a contract, more particularly as to the contractual obligation of Raytheon to assign work encompassed by the agreement to the employee-members of the petitioner. To compel this employer to live up to its commitment to arbitrate would in no way interfere with the Board's functions since the Board could not resolve this dispute either under the representation or jurisdictional dispute sections of the Act. In any event this Court has made crystal clear in *Smith* v. *Evening News Association* that even where the Board's jurisdiction is conceded, such jurisdiction "is not exclusive and does not destroy the jurisdiction of the courts in suits under 301."

For the reasons hereinbefore set forth, we urge that the decision below should be reversed.

Respectfully submitted

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Appendix "A"

STATUTORY PROVISIONS INVOLVED

Sec. 8

(b) It shall be unfair labor practice for a labor organization or its agents—

(4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work:

Sec. 9.

(c)(1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9(a), or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9(a); or

(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9(a);

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

Sec. 10.

. . . . .

(k) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(D) of section 8(b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless,

within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

Sec. 301.

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer whose activities affect commerce as defined in this Act shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

Office Supreme Court, U.S.
FILED
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JOHN F. DAVIS, CLERK

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v.

LOCAL NO. 1505 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, ET AL.,

RESPONDENT.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MOTION TO DISMISS

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MOTION TO DISMISS

On January 24, 1963, the parties entered into an agreement settling the pending action. A copy of said agreement is annexed hereto.

The petitioner respectfully requests the Court to vacate

the judgment below and to remand the case to the Court of Appeals for the First Circuit with directions to remand the cause to the District Court for the District of Massachusetts to dismiss the complaint. *United States* v. *Munsingwear, Inc.*, 340 U.S. 36, 39, and cases cited in n.2; *Black* v. *Amen*, 355 U.S. 600.

By its Attorneys,

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New York N.Y. January 24, 1963

The parties signatory below agree as follows:

1. An arbitration shall be conducted with IAM, IBEW and Raytheon as parties and with Saul Wallen as arbitrator, on the following submission:

Did the Company violate the IAM agreement by assigning the following work

1. Spencer Laboratory (Burlington)—The making of tools, jigs and fixtures from raw stock.
2. Quincy—The maintenance, set-up and servicing of stem bending machines.
3. Wayland Laboratories—The repair, replacement of parts and maintenance of blueprint machines.
4. Industrial Components Division (Newton)—The grinding of grid chopper blades on surface grinding machines.

to employees in the IBEW bargaining unit?

If so, what shall the remedy be?

The arbitration shall be final and binding on all parties.

2. Other grievances involving the contract issue involved in the foregoing four grievances shall be governed by such criteria or guides as may be set forth by Arbitrator Wallen as the basis for determining said four grievances. This shall apply either in subsequent arbitrations or in proceedings instituted under the AFL-CIO Internal Disputes Plan.

3. The United States Supreme Court shall be notified

that the case now pending before it involving the IAM, IBEW, and Raytheon as parties has been settled, and any other action necessary to make said case moot shall be taken by the parties involved.

Local No. 1836, IAM	Local 1505, IBEW
(s) Arthur J. Flamm, *Atty.*	(s) Timothy J. Murphy
Raytheon Company	David L. Cole
(s) Robert G. Hennemuth	(s) David L. Cole